

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OHIO
 3 EASTERN DIVISION

4
 5 IN RE: NATIONAL PRESCRIPTION MDL No. 2804
 6 OPIATE LITIGATION Case No. 17-md-2804
 7
 8 This document relates to: Judge Dan
 9 Aaron Polster
 10 The County of Cuyahoga v. Purdue
 11 Pharma, L.P., et al.
 12 Case No. 17-OP-45005
 13 City of Cleveland, Ohio vs. Purdue
 14 Pharma, L.P., et al.
 15 Case No. 18-OP-45132
 16 The County of Summit, Ohio,
 17 et al. v. Purdue Pharma, L.P.,
 18 et al.
 19 Case No. 18-OP-45090
 20
 21

22 Videotaped Deposition of Joseph Rannazzisi
 23 Washington, D.C.
 24 April 26, 2019
 25 8:37 a.m.

Reported by: Bonnie L. Russo
 Job No. 3301876

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1 Videotaped Deposition of Joseph Rannazzisi held
 2 at:

3
 4
 5 Williams & Connolly, LLP
 6 725 12th Street, N.W.
 7 Washington, D.C.

8 Pursuant to Notice, when were present on behalf
 9 of the respective parties:

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9 Department of Justice, Civil Fraud Section

10 Patrick J. Forrest, United States Department of
11 Justice, Drug Enforcement Administration

12 Daniel Russo, Videographer

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1 C O N T E N T S

2 EXAMINATION OF JOSEPH RANNAZZISI

3 PAGE

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5 BY MR. O'CONNOR 92

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8 BY MS. MAINIGI 226

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10 EXHIBITS

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14 History for Selected Substances15 Exhibit 3 Diversion Control Division 34
16 Website Pages17 Exhibit 4 Article entitled "Who is 74
18 Joe Rannazzisi: The DEA man
19 who fought the drug companies
and lost"20 Exhibit 5 Letter date stamped 100
12-29-1421 Exhibit 6 Cover2 Resources Podcast 104
22 Transcript23 Exhibit 7 Drug Enforcement 183
24 Administration's Regulation
25 on Medicine Hearing 7-12-07

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1 EXHIBITS (CONTINUED) :

2 Exhibit 8 Examining the Growing 190
3 Problems of Prescription

Drug and Heroin Abuse

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5 Exhibit 9 Rogue Online Pharmacies: 211
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8 Exhibit 10 Internet Pharmacies 216
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12 Exhibit 12 Letter dated 9-27-06 288
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15 CAH_MDL_PRIORPROD_DEA12_00010980-98116 Exhibit 14 Internet Pharmacies 356
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18 US-DEA-00002413

19 (Exhibits included with transcript.)

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We
3 are going on the record at 8:37 a.m. on April
4 26, 2019.5 Please note that the microphones are
6 sensitive and may pick up whispering, private
7 conversations and cellular interference.8 Please turn off all cell phones or place them
9 away from the microphones as they can interfere
10 with the deposition audio. Audio and video
11 recording will continue to take place unless
12 all parties agree to go off the record.13 This is Media Unit 1 of the
14 video-recorded deposition of Joseph Rannazzisi
15 taken by counsel for defendant in the matter of
16 In Re: National Prescription Opiate filed in
17 the United States District Court for the
18 Northern District of Ohio, Eastern Division,
19 Case No. 17-MD-2804.20 This deposition is being held at
21 Williams & Connolly located at 725 12th Street,
22 Northwest, Washington, D.C.23 My name is Daniel Russo from the
24 firm of Veritext Legal Solutions. I'm your

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1 videographer today. The court reporter is
 2 Bonnie Russo from the firm Veritext Legal
 3 Solutions.

4 Counsel and all present in the room
 5 and everyone attending remotely will now state
 6 their appearances and affiliations for the
 7 record, please.

8 MR. EPPICH: Chris Eppich of
 9 Covington & Burling for McKesson.

10 MS. MONAGHAN: Meghan Monaghan of
 11 Covington & Burling for McKesson.

12 MS. MAINIGI: Enu Mainigi, Williams
 13 & Connolly for Cardinal.

14 MS. McNAMARA: Colleen McNamara of
 15 Williams & Connolly for Cardinal.

16 MS. VENTURA: Catie Ventura from
 17 Kirkland & Ellis for Allergan.

18 MR. LIVINGSTON: Scott Livingston,
 19 Marcus & Shapira for defendant HBC.

20 MR. TYE: Michael Tye of Arnold &
 21 Porter for Endo.

22 MS. WINCKEL: Emilie Winckel of
 23 O'Melveny & Myers for J&J and Janssen.

24 MR. STEPHENS: Neal Stephens from
 25 Jones Day for Walmart.

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1 MR. DAVISON: William Davison from
 2 Ropes & Gray for Mallinckrodt and Specgx LLC.

3 MR. O'CONNOR: Andrew O'Connor from
 4 Ropes & Gray for Mallinckrodt.

5 MS. O'GORMAN: Debra O'Gorman from
 6 Dechert for Purdue.

7 MS. CONROY: Mildred Conroy from The
 8 Lanier Law Firm for plaintiffs.

9 MR. FULLER: Mike Fuller for the
 10 plaintiffs.

11 MR. FARRELL: Paul Farrell, Jr., for
 12 the plaintiffs.

13 MS. SINGER: Linda Singer, Motley
 14 Rice, for the plaintiffs.

15 MR. FINKELSTEIN: David Finkelstein,
 16 Department of Justice for the DEA.

17 MR. BENNETT: James Bennett from the
 18 U.S. Attorney's Office for the Northern
 19 District of Ohio for the United States, the DEA
 20 and the witness in his official capacity.

21 MR. UTTER: Greg Utter here on
 22 behalf of Mr. Rannazzisi as his personal
 23 counsel.

24 SPECIAL MASTER COHEN: David Cohen,
 25 Special Master.

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1 MR. FORREST: Patrick Forrest, Drug
 2 Enforcement Administration.

3 MS. BACCHUS: Renee Bacchus, U.S.
 4 Attorney's Office, Northern District of Ohio on
 5 behalf of DOJ, DEA and the witness.

6 MS. AGUINIGA: Sara Aguiniga, Motley
 7 Rice on behalf of plaintiffs.

8 MR. FELDMAN: Larry Feldman on
 9 behalf of the plaintiffs.

10 MS. MOORE: Kelly Moore on behalf of
 11 Rite Aid.

12 MR. STOFFELMAYR: Kaspar
 13 Stoffelmayr, Walgreens.

14 MR. HOBART: Geoffrey Hobart from
 15 Covington for McKesson.

16 MS. WICHT: Jennifer Wicht from
 17 Williams & Connolly for Cardinal Health.

18 MR. MATTHEWS: James Matthews for
 19 Anda.

20 MR. RUIZ: Anthony Ruiz, Zuckerman
 21 Spaeder for CVS Indiana, LLC and CVS Rx
 22 Services.

23 THE VIDEOGRAPHER: Anyone on the
 24 call that wants to identify themselves, please
 25 speak up.

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1 MR. LADD: Matthew Ladd from Morgan
 2 Lewis on behalf of Rite Aid.

3 MR. PADGETT: Bill Padgett on behalf
 4 of H.D. Smith.

5 MR. BEISELL: Patrick Beisell from
 6 Jones Day on behalf of Walmart.

7 MS. BARBER: Maureen Barber from
 8 Morgan Lewis on behalf of the Teva defendants.

9 THE VIDEOGRAPHER: Will the court
 10 reporter please swear in the witness.

11
 12 JOSEPH RANNAZZISI,
 13 being first duly sworn to tell the truth, the
 14 whole truth and nothing but the truth,
 15 testified as follows:

16 THE VIDEOGRAPHER: You may proceed,
 17 Counsel.

18 EXAMINATION BY COUNSEL FOR MCKESSON
 19 BY MR. EPPICH:

20 Q. Good morning, Mr. Rannazzisi. My
 21 name is Chris Eppich, I represent McKesson in
 22 this litigation and I will be asking you some
 23 questions this morning.

24 Please state your full name for the
 25 record.

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1 A. Joseph Thomas Rannazzisi.
 2 Q. Have you been deposed before, Mr.
 3 Rannazzisi?
 4 A. I have been through a lot of
 5 different types of testimony. I just don't
 6 recall if I have ever been deposed.
 7 Q. That's fair. Let me -- let me just
 8 review some of the ground rules for depositions
 9 before we get in.
 10 You have probably noticed the court
 11 reporter is taking down everything that we say
 12 and so to make her record clear and her life a
 13 little easier, we will need to talk one at a
 14 time. I will ask my questions and then just
 15 ask that you wait before I finish before you
 16 start with your answers.
 17 Does that make sense?
 18 A. Yes, sir.
 19 Q. Rather than shaking your head or
 20 nodding, if you could give a verbal response to
 21 my questions.
 22 A. Yes, sir.
 23 Q. If I ask a question and I am not
 24 clear, you don't understand, just let me know
 25 and if you don't let me know, I will assume you

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1 understand the scope of my question.
 2 Does that make sense?
 3 A. Yes, sir.
 4 Q. Now is there anything that would
 5 prevent you from testifying completely and
 6 truthfully today?
 7 A. No, sir.
 8 MR. EPPICH: Let me mark as Exhibit
 9 1.
 10 (Deposition Exhibit 1 was marked for
 11 identification.)
 12 MR. EPPICH: Exhibit 1 is the second
 13 amended notice of videotaped deposition of
 14 Joseph Rannazzisi.
 15 MS. SINGER: Excuse me one second,
 16 Counsel. Do you have copies for the plaintiffs
 17 too?
 18 BY MR. EPPICH:
 19 Q. Sir, have you seen Exhibit No. 1
 20 before?
 21 A. No, sir.
 22 Q. You haven't seen it?
 23 You didn't review it in preparation
 24 for today's deposition?
 25 A. No.

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1 Q. If I you could turn with me to the
 2 letter that is Exhibit A, four or five pages
 3 in. Now, this letter is prepared by the U.S.
 4 Department of Justice.
 5 Have you seen this letter before?
 6 A. Yes, I have.
 7 Q. And you understand Exhibit A to be
 8 a -- a letter from the DEA authorizing your
 9 testimony on certain subjects today?
 10 A. Yes.
 11 Q. You were the head of DEA's Office of
 12 Diversion Control from 2005 to 2015; is that
 13 right?
 14 A. Approximately July of 2005 to '15,
 15 yes.
 16 Q. July of 2005 to what month in 2015?
 17 A. October. October 31st, 2015.
 18 Q. Halloween. One of my favorite days.
 19 A. Uh-huh.
 20 Q. Now, between 2005 and 2015, you were
 21 the senior-most law enforcement official at the
 22 DEA responsible for pharmaceutical diversion?
 23 A. Yes, sir.
 24 Q. Was -- was there an opioid crisis
 25 the entire time you were the head of the Office

Page 20

1 of Diversion Control?
 2 MR. BENNETT: Objection. Calls for
 3 speculation.
 4 You can answer.
 5 MS. SINGER: Excuse me one second.
 6 Can we ask the people on the phone
 7 to mute, please.
 8 MR. UTTER: Go ahead. You can
 9 answer.
 10 THE WITNESS: Yes. Yes. There was
 11 an opioid crisis during that time period.
 12 BY MR. EPPICH:
 13 Q. And was the opioid crisis getting
 14 worse every year you were the head of the
 15 Office of Diversion Control?
 16 MR. BENNETT: Same objection.
 17 THE WITNESS: Overdoses -- overdose
 18 deaths increased, yes.
 19 BY MR. EPPICH:
 20 Q. As head of the Office of Diversion
 21 Control, you were responsible for oversight and
 22 control of all regulatory compliance,
 23 inspections, and civil and criminal
 24 investigations of approximately 1.6 million DEA
 25 registrants; isn't that correct?

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1 A. Yes.
 2 Q. And you provided leadership to a
 3 team of 300 personnel?
 4 A. Direct -- direct report,
 5 approximately -- you know, in headquarters,
 6 approximately 300, yes.
 7 Q. And you controlled and operating
 8 budget of approximately \$350 million, correct?
 9 A. Yes.
 10 Q. Now, Mr. Rannazzisi, every entity
 11 that is involved with getting opioids to
 12 patients has to be registered with the DEA,
 13 correct?
 14 A. Could you repeat that question.
 15 Q. Every entity that is involved with
 16 getting opioids to patients has to be
 17 registered with the DEA.
 18 A. No. That's not correct.
 19 Q. Which entities do not have to be
 20 registered?
 21 A. Nurses, pharmacists. They have
 22 no -- they're not registered.
 23 Q. But manufacturers have to be
 24 registered?
 25 A. Yes.

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1 Q. Distributors have to be registered?
 2 A. Yes.
 3 Q. Pharmacies have to be registered?
 4 A. Yes.
 5 Q. And doctors have to be registered?
 6 A. Yes.
 7 Q. Now, none of those individuals or
 8 entities can lawfully handle opioids without
 9 DEA registration.
 10 A. Yes.
 11 Q. Now, DEA can, when it determines it
 12 is legally appropriate, suspend or revoke a DEA
 13 registration.
 14 A. Yes.
 15 Q. For example, that's a way the DEA
 16 has to cut off a diverting registrant?
 17 A. Repeat that question again, please.
 18 Q. DEA's authority to suspend or revoke
 19 a DEA registration is a way for DEA to cut off
 20 a diverting registrant; isn't that correct?
 21 A. That authority, we could stop a
 22 registrant from conducting transactions with
 23 controlled substances, yes.
 24 Q. Yes.
 25 You could cut them off, correct?

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1 A. Yeah. Stopping transactions, yes.
 2 Cutting them off.
 3 Q. In fact, it's -- it's DEA's
 4 responsibility to do its best to ensure that
 5 anyone who is registered to DEA or by DEA is
 6 acting appropriately.
 7 MS. SINGER: Objection. Vague.
 8 MR. BENNETT: Join that objection.
 9 THE WITNESS: It's DEA's
 10 responsibility to ensure that the registrant
 11 population is complying with the code of
 12 federal regulations 21 C.F.R. and also 21 USC,
 13 United States code.
 14 BY MR. EPPICH:
 15 Q. You're familiar with the ARCOS
 16 database?
 17 A. Yes, I am.
 18 Q. Manufacturers and distributors are
 19 required to report data to ARCOS on every
 20 single controlled substance transaction?
 21 A. Yes.
 22 Q. DEA can then make use of that data,
 23 can't it?
 24 MR. BENNETT: Objection. Vague.
 25 THE WITNESS: DEA does use that

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1 data.
 2 BY MR. EPPICH:
 3 Q. And using ARCOS, DEA monitors the
 4 flow of DEA-controlled substances from their
 5 point of manufacture through commercial
 6 distribution channels to point of sale or
 7 distribution to the dispensing retail level?
 8 MS. SINGER: Objection. Foundation.
 9 MR. BENNETT: Objection. Vague.
 10 THE WITNESS: DEA can use that
 11 system to monitor transactions downstream.
 12 BY MR. EPPICH:
 13 Q. And that's downstream from the
 14 manufacturers all the way to the retail level,
 15 correct?
 16 A. Yes. I believe so.
 17 SPECIAL MASTER COHEN: Just a
 18 minute, please.
 19 We're still hearing folks on the
 20 phone. If you are on the phone, please mute
 21 yourself.
 22 BY MR. EPPICH:
 23 Q. So, Mr. Rannazzisi, using ARCOS, DEA
 24 can see the number of opioids sold by
 25 manufacturers to distributors?

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1 A. Yes.
 2 Q. And using ARCOM, DEA can see the
 3 number of opioids distributed by distributors
 4 to pharmacies, hospitals and doctors?
 5 A. Yes.
 6 Q. Registrants did not have access to
 7 ARCOM data during your -- the time you led the
 8 Office of Diversion Control, correct?
 9 A. They had access to their own data
 10 that they submitted to ARCOM. But no, not
 11 other.
 12 Q. So registered --
 13 A. From the ARCOM.
 14 Q. Pardon me.
 15 Registrants had no access to the
 16 ARCOM database, correct?
 17 A. Except for their own entries, yes.
 18 Q. Their own entries that's they
 19 submitted?
 20 A. Yes, that they submitted.
 21 Q. But they couldn't access those
 22 entries through the ARCOM database, could they?
 23 A. I'm not sure about that.
 24 Q. There was no portal that you were
 25 aware of that a registrant could log into to

1 see their own data in the ARCOM database?
 2 A. Again, I'm not sure about that.
 3 Q. Registrants requested ARCOM data
 4 from DEA at various times, but DEA declined to
 5 share it, correct?
 6 MR. BENNETT: Objection. Compound.
 7 MS. SINGER: Objection. Foundation.
 8 THE WITNESS: Just answering the
 9 question in order --
 10 MR. EPPICH: Yes.
 11 THE WITNESS: -- registrants have
 12 requested access to ARCOM that -- for that
 13 data. And they have been declined, yes.
 14 BY MR. EPPICH:
 15 Q. But after you left the DEA, it's
 16 true that DEA decided registrants should be
 17 allowed to access some ARCOM data, correct?
 18 MR. BENNETT: Objection.
 19 THE WITNESS: I wouldn't know about
 20 that.
 21 BY MR. EPPICH:
 22 Q. You don't read the press releases
 23 from the DEA?
 24 MR. BENNETT: Objection.
 25 THE WITNESS: Again, I -- I have no

1 direct knowledge of what the DEA did or what
 2 information they were allow -- they released.
 3 BY MR. EPPICH:
 4 Q. Sitting here today, are you aware
 5 that registrants can access some data from the
 6 ARCOM database?
 7 MR. UTTER: Object. Just answer the
 8 question.
 9 MR. BENNETT: Objection.
 10 MS. SINGER: Asked and answered.
 11 MR. UTTER: You can answer again.
 12 THE WITNESS: Again, I don't have
 13 any direct knowledge of what they have access
 14 to.
 15 BY MR. EPPICH:
 16 Q. I understand that you're testifying
 17 that you have no direct knowledge. I'm asking
 18 you if you have any knowledge.
 19 MR. BENNETT: Objection.
 20 MR. UTTER: Objection. Speculation.
 21 Go ahead. You can answer.
 22 MR. BENNETT: Objection. Asked and
 23 answered.
 24 THE WITNESS: Again, I understand
 25 that there was some information that's been

1 provided to the industry. But I don't know
 2 exactly what information that is.
 3 BY MR. EPPICH:
 4 Q. And I'm only asking you whether or
 5 not you know that some information was provided
 6 to registrants in the ARCOM database.
 7 MR. UTTER: For the forth time --
 8 MS. SINGER: Objection. Asked and
 9 answered.
 10 MR. UTTER: -- you can answer the
 11 question. And I'm not going to let you do it
 12 again.
 13 THE WITNESS: Again, I'm aware that
 14 something from ARCOM has been allowed to be
 15 released to the registrants. Correct. But I'm
 16 not aware of what that is.
 17 BY MR. EPPICH:
 18 Q. Do you agree that this is a good
 19 change?
 20 MS. SINGER: Objection.
 21 MR. BENNETT: Objection.
 22 MR. UTTER: Object.
 23 THE WITNESS: Again, it's -- I don't
 24 know exactly what they're releasing and how
 25 they're releasing it.

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1 BY MR. EPPICH:
 2 Q. Would you agree that access to ARCos
 3 helps registrants combat diversion of
 4 controlled substances?
 5 MR. BENNETT: Objection.
 6 THE WITNESS: Not necessarily.
 7 MR. BENNETT: Scope.
 8 BY MR. EPPICH:
 9 Q. And why not?
 10 A. Because --
 11 MS. SINGER: Objection. Scope.
 12 MR. BENNETT: Objection. Scope.
 13 THE WITNESS: I was --
 14 MR. UTTER: Go ahead.
 15 THE WITNESS: Because industry had
 16 other tools at their disposal to see downstream
 17 transactions that were not listed as business
 18 or proprietary.
 19 BY MR. EPPICH:
 20 Q. But ARCos -- strike that.
 21 But distributors could not see,
 22 without ARCos, the amount of controlled
 23 substances each distributor sold to a
 24 particular customer, correct?
 25 A. There were systems that were outside

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1 of ARCos that could be accessed, purchased to
 2 see that information.
 3 Q. What systems were those?
 4 A. IMS data.
 5 MS. SINGER: Scope.
 6 THE WITNESS: Any aggregated data.
 7 BY MR. EPPICH:
 8 Q. Does the IMS data or aggregated data
 9 include all of the information that's contained
 10 within the ARCos database?
 11 A. I don't know if that's correct, no.
 12 Q. DEA established quotas for
 13 controlled substances for each year, didn't
 14 they?
 15 A. Yes, sir.
 16 Q. Quotas are set based on the
 17 estimated medical scientific research and
 18 industrial needs of the United States?
 19 A. Yes, sir.
 20 Q. Your office, the Office of Diversion
 21 Control, was responsible for setting quotas?
 22 A. Yes, sir.
 23 Q. And as head of the Office of
 24 Diversion Control, it was your responsibility
 25 to authorize quotas from 2005 to 2015?

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1 A. I authorized the letters. The
 2 actual quota is authorized by the
 3 administrator. It's a delegated function down
 4 to me for the letters.
 5 Q. But you're part of the process for
 6 authorizing a quota, aren't you?
 7 A. Yes, sir.
 8 Q. And quota levels for opioids
 9 constantly increased under your watch, correct?
 10 A. Yes, sir.
 11 Q. And, in fact, quota levers -- quota
 12 levels for opioids increased significantly
 13 under your watch, correct?
 14 MS. SINGER: Objection. Vague.
 15 MR. BENNETT: Objection.
 16 MR. UTTER: Same objection.
 17 THE WITNESS: They did increase.
 18 But they increased because, by statute, we were
 19 required to look at certain things. So yes.
 20 MR. EPPICH: Let's mark as Exhibit
 21 2.
 22 (Deposition Exhibit 2 was marked for
 23 identification.)
 24 BY MR. EPPICH:
 25 Q. Now, sir, Exhibit 2 is a chart dated

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1 October 8, 2014, that was posted on DEA's web
 2 site titled "Aggregate Production Quota History
 3 For Selected Substances."
 4 Are you familiar with this document?
 5 A. Yes, sir.
 6 MS. SINGER: Objection. Foundation
 7 for the document.
 8 BY MR. EPPICH:
 9 Q. The aggregate production quotas that
 10 are reflected in Exhibit 2, these were the
 11 quotas while you were the head of the Office of
 12 Diversion Control, correct?
 13 A. Yes.
 14 Q. Now, I'd like to look at a couple of
 15 these numbers today. If we -- if we go on the
 16 left side under "Controlled Substance" to
 17 Hydrocodone.
 18 Do you see that, sir?
 19 A. Yes, sir.
 20 Q. And if we look under year 2005, the
 21 quota appears to be 37,604 kilograms, correct?
 22 A. Yes.
 23 Q. And as we go across the document to
 24 2015, the quota is, in 2015, 99,625 kilograms;
 25 is that correct?

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1 A. Yes.
 2 Q. Now, that's -- that's over a hundred
 3 percent increase in the Hydrocodone quota by
 4 DEA under your leadership.
 5 Do you see that?
 6 A. It is an increase, yes.
 7 Q. It's a -- over a hundred percent
 8 increase, isn't it?
 9 A. Yes.
 10 Q. Now, let's look at oxycodone. In
 11 the oxycodone line we'll look at the "Sale"
 12 line. The quota level for 2005 is 50,490
 13 kilograms.
 14 Do you see that?
 15 A. Yes.
 16 Q. And looking at the year 2015, the
 17 quota level is 137,500 kilograms.
 18 Do you see that?
 19 A. Yes.
 20 Q. And that's over 150 percent increase
 21 in the oxycodone quota under your leadership.
 22 Do you see that?
 23 A. Yes, close. Close to it, yeah.
 24 Q. Now, by increasing the quota year
 25 after year, DEA was telling registrants and the

1 public pain medication should be available to
 2 support the legitimate medical needs; isn't
 3 that correct?
 4 MS. SINGER: Objection. Vague.
 5 Objection. Scope.
 6 THE WITNESS: No. That's not
 7 correct.
 8 MR. EPPICH: Well, let me -- let me
 9 -- let me show you a statement from the DEA's
 10 web site.
 11 And we'll mark this as Exhibit No.
 12 3.
 13 (Deposition Exhibit 3 was marked for
 14 identification.)
 15 BY MR. EPPICH:
 16 Q. Now, Exhibit 3 is a printout of the
 17 DEA's web site where the DEA posted a joint
 18 statement from DEA and 21 health organizations
 19 on October 23, 2001.
 20 MR. UTTER: Excuse me a moment. If
 21 you're going to ask the witness about a
 22 document, please give him a moment to review
 23 the document.
 24 MR. EPPICH: Absolutely.
 25 MR. UTTER: And he'll let you know

1 when he's done reviewing the document.
 2 Is that all right?
 3 MR. EPPICH: No problem.
 4 MR. UTTER: Thank you.
 5 MS. SINGER: Object to this
 6 document. It doesn't have a date.
 7 MR. EPPICH: The date's on Page 1,
 8 Ms. Singer.
 9 You see the October 23, 2001 date
 10 next to the DEA link?
 11 MS. SINGER: Yes. But again,
 12 there's no source from where this came from.
 13 My objection is noted for the
 14 record.
 15 MR. EPPICH: Yes, ma'am.
 16 BY MR. EPPICH:
 17 Q. Have you had a chance to review
 18 Exhibit 3, sir?
 19 A. Yes.
 20 Q. Have you seen Exhibit 3 before?
 21 A. Never.
 22 Q. I'd like to turn to Page 2, the
 23 letter -- excuse me -- the joint statement that
 24 you've been reviewing.
 25 A. Uh-huh.

1 Q. In the fourth paragraph, the DEA and
 2 these 21 health organizations say: "This
 3 consensus statement is necessary based on the
 4 following facts."
 5 Do you see that?
 6 A. Yes.
 7 Q. And the -- the first bullet
 8 underneath that paragraph states:
 9 "Undertreatment of pain is a serious problem in
 10 the United States, including pain among
 11 patients with chronic conditions and those who
 12 are critically ill or near death. Effective
 13 pain management is an integral and important
 14 aspect of quality medical care, and pain should
 15 be treated aggressively."
 16 Do you see that?
 17 A. I do see that.
 18 Q. You treat pain aggressively with
 19 pain medication, right?
 20 MR. BENNETT: Objection. Scope.
 21 Objection. Foundation.
 22 MR. UTTER: Just object to whether
 23 he has the background to answer the question.
 24 But go ahead.
 25 THE WITNESS: Not necessarily.

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1 BY MR. EPPICH:

2 Q. Well, let's look at Bullet 2: "For
 3 many patients, opioid analgesics" -- I'm sure I
 4 pronounced that wrong.

5 A. Analgesics.

6 Q. -- "analgesics, when used as
 7 recommended by established pain management
 8 guidelines, are the most effective way to treat
 9 their pain and often the only treatment option
 10 that provides significant relief."

11 This is a statement on the DEA's web
 12 site.

13 MR. BENNETT: Objection.

14 MR. UTTER: Hold on.

15 MR. BENNETT: Foundation.

16 MR. UTTER: Hold on.

17 Is there a question?

18 MR. EPPICH: I asked him if this was
 19 a statement on the DEA's web site.

20 THE WITNESS: I have no idea.

21 MS. SINGER: Objection. Foundation.

22 MR. UTTER: He's answered it.

23 THE WITNESS: I have no idea. I've
 24 never seen this document. And this document
 25 does not comport to current or -- or post-2004

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1 -- I -- I don't -- I've never even seen this.
 2 I have no idea where this came from. I don't
 3 know who wrote it.

4 And -- and, quite frankly, there's
 5 no DEA signature; there's no DEA -- there's no
 6 document that -- this document has no -- I have
 7 no idea where this document came from, where in
 8 DEA it came from, or who might have signed off
 9 on this document. But it wasn't me. Because
 10 in 2001 I was not in headquarters.

11 BY MR. EPPICH:

12 Q. Well, I printed this document from
 13 the DEA's web site yesterday.

14 MR. BENNETT: Objection.

15 BY MR. EPPICH:

16 Q. And it --

17 MS. SINGER: Objection. Testifying.

18 BY MR. EPPICH:

19 Q. And I -- and I'll say this statement
 20 was on your web site -- I'll strike that. I'll
 21 strike that.

22 Sitting here today, do you have any
 23 reason to doubt that this document was posted
 24 on the DEA web site during your tenure at the
 25 head of the Office of Diversion Control?

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1 MR. UTTER: Object. Foundation.

2 MR. BENNETT: Objection.

3 Foundation. Objection. Scope.

4 THE WITNESS: I have no idea.

5 BY MR. EPPICH:

6 Q. Following the distributor initiative
 7 -- you're -- you're familiar with the
 8 distributor initiative?

9 A. Yes, I am.

10 Q. Following the distributor
 11 initiative, distributors repeatedly asked DEA
 12 for guidance to clarify confusion in the
 13 industry, correct?

14 MS. SINGER: Objection. Lack of
 15 foundation.

16 THE WITNESS: I --

17 MR. BENNETT: Objection. Vague.

18 THE WITNESS: I have no idea what --
 19 what time period, who was asking. I don't
 20 know.

21 BY MR. EPPICH:

22 Q. But when you were the head of the
 23 Office of Diversion Control, it's true that
 24 distributors were asking the DEA for guidance
 25 for suspicious order monitoring programs,

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1 correct?

2 MR. BENNETT: Objection. Vague as
 3 to time.

4 MR. UTTER: Same objection.

5 THE WITNESS: Could you kind of
 6 narrow that a little? At what point in time?
 7 Is it after the distributors signed
 8 their memorandum agreement saying that they
 9 would comply with the -- the 1301.74(b)? Was
 10 it after that or before that time?

11 BY MR. EPPICH:

12 Q. Well, you're aware of the
 13 distributor briefings that DEA held with each
 14 of the distributors?

15 A. Yes, I am.

16 Q. And those began in the fall of 2005,
 17 correct?

18 A. Yes.

19 Q. And they continued for several
 20 years, correct?

21 A. Yes.

22 Q. And throughout -- especially the
 23 first three or four years after the distributor
 24 briefings began, distributors raised questions
 25 with the DEA about the changes, correct?

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1 MR. BENNETT: Objection. Vague.
 2 MS. SINGER: Objection. Vague.
 3 THE WITNESS: I'm -- I'm kind of
 4 confused.
 5 What changes are you talking about?
 6 BY MR. EPPICH:
 7 Q. Well, DEA -- the -- the distributors
 8 raised questions --
 9 A. Well --
 10 Q. -- to DEA, correct?
 11 Questions that relate --
 12 MR. BENNETT: Object.
 13 BY MR. EPPICH:
 14 Q. -- to the -- the -- the comments
 15 made by DEA in the distributor briefings?
 16 A. And those distributor briefings were
 17 pretty extensive. And they were asked if they
 18 had any questions before they left. And they
 19 assured us that they understood what the rules
 20 were.
 21 Q. And the distributors continued to
 22 ask the DEA questions ever after those
 23 distributor briefings ended.
 24 MR. BENNETT: Objection. Vague as
 25 to time. Objection. Mischaracterizes

1 testimony.
 2 MR. UTTER: Same objection.
 3 Go ahead.
 4 THE WITNESS: It was years later
 5 before we heard that, that they were confused.
 6 Years later.
 7 BY MR. EPPICH:
 8 Q. When did DEA hear that the
 9 distributors were confused?
 10 A. Had to be sometime around 2000 --
 11 the end of 2010 or early 2011.
 12 Q. And in response to that knowledge,
 13 did you provide guidance to distributors?
 14 A. If I remember correctly, there was
 15 meetings with individual distributors and also
 16 with HDMA.
 17 Q. But isn't it true that you
 18 affirmatively stated that it was DEA's policy
 19 not to approve any suspicious order monitoring
 20 programs?
 21 A. That was the position of the agency.
 22 And yes, that was stated in at least two of my
 23 letters to industry.
 24 Q. And it was DEA's policy not to tell
 25 registrants that an order is or is not

1 suspicious, correct?
 2 A. Well, that's a business decision
 3 that only the -- the distributor could make.
 4 They're the only ones who know their
 5 customer. And they know what their customers
 6 are doing. And they know the -- the population
 7 around the customer's business. They know what
 8 is in the area that could warrant an increase
 9 or not.
 10 So DEA couldn't make that decision.
 11 It had to come as a business decision from the
 12 distributor.
 13 Q. So it was DEA's policy not to tell
 14 registrants that an order is suspicious?
 15 MS. SINGER: Objection.
 16 MR. BENNETT: Objection. Asked and
 17 answered.
 18 MS. SINGER: Objection. Scope.
 19 Calls for this witness's opinion on DEA policy.
 20 MR. UTTER: Go ahead.
 21 THE WITNESS: It was a business
 22 decision that would be made by the distributor
 23 whether an order is suspicious. And DEA made
 24 that very clear to the distributors.
 25 BY MR. EPPICH:

1 Q. During your time as the head of
 2 Office of Diversion Control, it was DEA's
 3 policy not to tell a registrant if they should
 4 stop sales to a customer, correct?
 5 MS. SINGER: Same objection.
 6 THE WITNESS: There were due process
 7 concerns. And after consultation with
 8 counsel's office, we decided that that was not
 9 appropriate because of the due process
 10 concerns.
 11 BY MR. EPPICH:
 12 Q. So if a distributor came to you in
 13 2007 or '8 or '9 or '10 and said, "We -- we
 14 can't tell if this order is legitimate or
 15 suspicious," DEA would refuse to answer?
 16 MR. BENNETT: Objection. Compound.
 17 MR. UTTER: Object to the incomplete
 18 hypothetical.
 19 You can go ahead and answer if you
 20 understand all the elements of the
 21 hypothetical.
 22 THE WITNESS: Yeah. I'm trying to.
 23 Could you repeat that question,
 24 please.
 25 BY MR. EPPICH:

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1 Q. Sure.
 2 If a distributor came to you while
 3 you were the head of the Office of Diversion
 4 Control and said, "We cannot tell if this order
 5 is legitimate or suspicious, the DEA would
 6 refuse to answer the distributor's question"?
 7 MR. UTTER: Same objection.
 8 Go ahead.
 9 MS. SINGER: Objection.
 10 THE WITNESS: Yeah.
 11 MS. SINGER: Calls for speculation.
 12 THE WITNESS: I mean I'd have to
 13 have more information than that.
 14 BY MR. EPPICH:
 15 Q. But as a general policy --
 16 A. I can't answer.
 17 Q. -- it would be DEA's -- it would be
 18 DEA's response to refuse to answer?
 19 A. It's DEA's policy that they do not
 20 advise when to ship or when to file a
 21 suspicious orders. That's a business decision
 22 that, under the regulations, is maintained by
 23 the --
 24 Q. This was the --
 25 A. -- distributor.

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1 Q. And this was the policy at DEA the
 2 entire time that you were the head of the
 3 Office of Diversion Control, correct?
 4 A. It was --
 5 MS. SINGER: Objection. Scope.
 6 THE WITNESS: It was the policy of
 7 the agency.
 8 BY MR. EPPICH:
 9 Q. Now, Mr. Rannazzisi, I've listened
 10 to a lot of your interviews to prepare for this
 11 deposition. I've heard you blame a lot of
 12 people and entities for the opioid crisis.
 13 Is that true?
 14 MR. BENNETT: Objection.
 15 Argumentative.
 16 MS. SINGER: Objection. Testifying.
 17 MR. UTTER: Lacks foundation.
 18 Compound.
 19 Go ahead.
 20 THE WITNESS: Could you -- again,
 21 could you repeat the question.
 22 BY MR. EPPICH:
 23 Q. Well, it's true that you've blamed
 24 distributors for opioid crisis, isn't it?
 25 MR. BENNETT: Objection.

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1 Argumentative.
 2 THE WITNESS: Based on the
 3 violations of the distributors in the past,
 4 yes, I have.
 5 BY MR. EPPICH:
 6 Q. And it's true that you've blamed the
 7 manufacturers for contributing to the opioid
 8 crisis?
 9 MR. BENNETT: Same objection.
 10 THE WITNESS: I have discussed the
 11 manufacturers' role, yes.
 12 BY MR. EPPICH:
 13 Q. And you've blamed the manufacturers,
 14 haven't you?
 15 MR. BENNETT: Objection.
 16 Argumentative.
 17 MS. SINGER: Objection. Asked and
 18 answered.
 19 THE WITNESS: Yes.
 20 BY MR. EPPICH:
 21 Q. And you've blamed pharmacies?
 22 MR. BENNETT: Objection.
 23 Argumentative.
 24 THE WITNESS: Yes.
 25 BY MR. EPPICH:

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1 Q. You've blamed doctors?
 2 MR. BENNETT: Same objection.
 3 THE WITNESS: Yes.
 4 BY MR. EPPICH:
 5 Q. I've even heard you blame other
 6 divisions and individuals within DEA --
 7 MR. BENNETT: Same objection.
 8 BY MR. EPPICH:
 9 Q. Isn't that true?
 10 A. Blame other divisions concerning the
 11 opioid crisis.
 12 Q. Yes, sir.
 13 MS. SINGER: Objection. Scope.
 14 THE WITNESS: I don't recall blaming
 15 other divisions.
 16 BY MR. EPPICH:
 17 Q. Well, you've blamed the Office of
 18 Chief Counsel within the DEA, correct?
 19 MS. SINGER: Objection.
 20 MR. BENNETT: Objection.
 21 MS. SINGER: Scope.
 22 THE WITNESS: We've -- chief
 23 counsel, in the normal process of moving cases
 24 through, we've had differences in cases, yes.
 25 BY MR. EPPICH:

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1 Q. You've criticized the Office of
2 Chief Counsel.
3 MR. BENNETT: Objection. Scope.
4 THE WITNESS: I don't recall ever
5 openly criticizing the Office of Chief Counsel.
6 BY MR. EPPICH:
7 Q. Well, maybe not openly, but in
8 communications within the agency, correct?
9 MR. BENNETT: Objection. Scope.
10 This witness is not authorized to
11 disclose attorney-client privileged
12 communications.
13 And to the extent that you can
14 answer that question without disclosing
15 communications that you have had with chief
16 counsel's office, you may answer. If your
17 answer requires you to disclose communications
18 that you've had with chief counsel's office,
19 then you may not answer.
20 THE WITNESS: It's communications
21 with chief counsel's office. I can't answer
22 that question.
23 BY MR. EPPICH:
24 Q. It's true that DEA controls the
25 closed system of drug distribution, right?

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1 A. Yes.
2 MS. SINGER: Objection. Foundation.
3 MR. BENNETT: Objection. Vague.
4 BY MR. EPPICH:
5 Q. DEA registers all persons who handle
6 Section 2 controlled substances, correct?
7 MS. SINGER: Objection.
8 THE WITNESS: What is --
9 MS. SINGER: Mischaracterizes prior
10 testimony.
11 BY MR. EPPICH:
12 Q. I'm sorry. Schedule II controlled
13 substances.
14 A. And repeat the question, please.
15 Q. Yes. Let's strike that.
16 It's true that DEA registers all
17 persons and entities who handle Schedule II
18 controlled substances?
19 MR. UTTER: Object. Asked and
20 answered.
21 You may answer it again.
22 MS. SINGER: Objection.
23 Mischaracterizes prior testimony.
24 THE WITNESS: That's -- that's not
25 true.

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1 BY MR. EPPICH:
2 Q. It's true the DEA registers all
3 manufacturers, distributors, pharmacies and
4 doctors that handle Schedule II controlled
5 substances?
6 A. That's true. If -- if their
7 registration allows them to handle
8 Schedule IIs, yes.
9 Q. And DEA inspects the documentation
10 of these registrants?
11 MR. BENNETT: Objection. Vague.
12 THE WITNESS: I'm -- I'm not sure
13 what you mean by documentation.
14 BY MR. EPPICH:
15 Q. Well, DEA -- DEA controls the amount
16 of controlled substances produced, bought, sold
17 or otherwise transferred between these
18 manufacturers, distributors, pharmacies and
19 doctors, correct?
20 MS. SINGER: Objection. Vague.
21 MR. BENNETT: Objection.
22 MR. UTTER: Objection. Lacks
23 foundation.
24 Go ahead.
25 THE WITNESS: I -- I'm not -- I'm

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1 not -- I'm still not sure what -- what you mean
2 by -- when you mean -- you said controls the
3 amount of transaction. I don't understand
4 that.
5 Would you explain?
6 MR. EPPICH: I can strike that
7 question.
8 THE WITNESS: Yeah.
9 BY MR. EPPICH:
10 Q. When deciding to grant registration
11 to a manufacturer, distributor, pharmacy or
12 doctor, the DEA inspects documentation from
13 each of these potential registrants, correct?
14 A. You're talking about --
15 MS. SINGER: Objection. Vague.
16 THE WITNESS: You're talking about
17 --
18 MR. BENNETT: Same Objection.
19 THE WITNESS: -- registration
20 applications?
21 MR. EPPICH: Yes, sir.
22 THE WITNESS: Yes.
23 BY MR. EPPICH:
24 Q. And all of the materials that each
25 of these potential registrants submits with

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1 their application, correct?

2 A. Yes.

3 Q. Are there many ways diversion can
4 occur -- there are many ways diversion can
5 occur, correct?

6 A. Yes.

7 Q. Opioids can be stolen from a
8 delivery truck?

9 A. Yes.

10 Q. That's diversion, correct?

11 A. That is.

12 Q. Someone can use opioids in a way
13 other than how they've been prescribed to them,
14 true?

15 A. That's not diversion.

16 Q. Someone can go into their
17 grandmother's cabinet, take the grandmother's
18 opioids that she got for a legitimate reason;
19 and that's diversion, isn't it?

20 A. Technically, yes, that's diversion.

21 Q. Someone could take opioids from a
22 friend who got them for a legitimate reason.
23 That's diversion.

24 A. Yes.

25 Q. In fact, you -- you would agree that

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1 the vast majority of diversion occurs when
2 someone takes opioids from a friend or family
3 member?

4 MR. BENNETT: Objection.

5 MS. SINGER: Objection. Scope and
6 vague.

7 MR. BENNETT: Objection. Vague.
8 Objection. Incomplete hypothetical.
9 Objection. Scope.

10 MR. UTTER: Same objections.

11 Go ahead.

12 THE WITNESS: You know, no. I
13 wouldn't agree to that. There's many ways that
14 have nothing to do with taking something from a
15 family member.

16 BY MR. EPPICH:

17 Q. When asked what you would do
18 differently as the head of diversion control in
19 an interview, you said publicly that, "I would
20 not do anything differently. That's for sure."

21 Is that true?

22 MR. BENNETT: Objection.
23 Foundation.

24 MR. UTTER: Same objection.
25 Go ahead.

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1 THE WITNESS: I don't remember
2 exactly what the context of that question was
3 when they asked me, what we were discussing at
4 the time. So I -- I -- I just don't think it's
5 something I could answer without looking at who
6 was interviewing me and what the interview was
7 about.

8 BY MR. EPPICH:

9 Q. Well, sitting here today, sir,
10 thinking about your career as the head of the
11 Office of Diversion Control, is there anything
12 you would do differently?

13 MR. BENNETT: Objection. Scope.
14 Objection. Vague.

15 MR. UTTER: Objection. Calls for
16 speculation.

17 Go ahead.

18 THE WITNESS: I don't know if -- I
19 don't know if I could answer that right now. I
20 just don't know. I mean this -- I would -- I
21 would have to sit back and think about
22 everything we did. And so I -- I just -- I
23 can't answer that right now.

24 BY MR. EPPICH:

25 Q. Well, would you give registrants

1 access to the ARCos data?

2 MR. BENNETT: Objection. Calls for

3 speculation. Incomplete hypothetical.

4 MS. SINGER: Objection.

5 THE WITNESS: Again, I have no idea

6 how they -- what access they have to ARCos.

7 And I was under different limitations, it

8 appears, than what they're doing today.

9 BY MR. EPPICH:

10 Q. But my question was whether or not

11 you would give them any access to ARCos data if

12 you were to do it again.

13 MR. BENNETT: Objection.

14 BY MR. EPPICH:

15 Q. Not what they were doing today.

16 MR. BENNETT: Objection.

17 Speculation. Incomplete hypothetical. And

18 asked and answered.

19 MR. UTTER: Object. Assumes he had

20 the authority do that.

21 Go ahead. You can answer.

22 THE WITNESS: Again, I could only go

23 with what I could do when I was the head of the

24 Office of Diversion Control based on agency

25 policy in consultation with counsel and

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1 counsel. And the agency made a decision that
 2 ARCOS data was not -- was business proprietary
 3 and was not going to be released in that
 4 manner.

5 BY MR. EPPICH:

6 Q. Would you give registrants any more
 7 information or guidance about suspicious order
 8 monitoring programs and suspicious orders?

9 MR. BENNETT: Objection.

10 Speculation. Objection. Incomplete
 11 hypothetical.

12 MR. UTTER: Go ahead.

13 MR. BENNETT: And objection. Scope.
 14 Sorry.

15 THE WITNESS: I think that the
 16 suspicious order monitoring regulation
 17 1301.74(b) was -- the definition of suspicious
 18 order is very straightforward.

19 I don't know what other information
 20 I could provide to them to clarify what a
 21 suspicious orders is without making a business
 22 decision for them, which the regulations would
 23 not allow me to do.

24 BY MR. EPPICH:

25 Q. Would you change the regulations --

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1 MS. SINGER: Objection.

2 BY MR. EPPICH:

3 Q. -- if you were to go back?

4 MS. SINGER: Objection. Scope.

5 MR. BENNETT: Object --

6 THE WITNESS: I --

7 MR. BENNETT: Hold on.

8 Objection. Scope. Objection.

9 Calls for speculation. Objection. Incomplete
 10 hypothetical.

11 I will also instruct the witness
 12 that, to the extent there were internal
 13 deliberations that were not made public by the
 14 DEA during your time there, you are not
 15 authorized to disclose those internal
 16 deliberations.

17 MR. UTTER: Same objection.

18 Go ahead.

19 THE WITNESS: The problem is -- is
 20 the regulation change was not under my
 21 authority. The regulation change would be
 22 under the authority of the administrator of the
 23 Drug Enforcement Administration and Department
 24 of Justice.

25 That's -- so whether I make that

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1 decision or not, the final decision is the
 2 Department of Justice and the Drug Enforcement
 3 Administration leadership. So I -- I couldn't
 4 answer that.

5 BY MR. EPPICH:

6 Q. And you have no role in that
 7 process? You can't suggest a change?

8 MS. SINGER: Objection. Scope.

9 MR. BENNETT: Objection. Scope.

10 You are not authorized to disclose
 11 internal deliberative process of the agency.
 12 To the extent you can answer without disclosing
 13 the internal deliberative process of the
 14 agency, you may answer.

15 THE WITNESS: I can't -- I can't
 16 answer that question.

17 BY MR. EPPICH:

18 Q. You've been criticized for your
 19 actions by head of Office of Diversion Control.

20 MR. BENNETT: Objection.

21 BY MR. EPPICH:

22 Q. That's true, correct?

23 MS. SINGER: Objection. Vague.

24 MR. BENNETT: Objection. Vague.

25 THE WITNESS: Do you have any

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1 specific criticism of me?

2 BY MR. EPPICH:

3 Q. I'm just asking you if you're aware
 4 you've been criticized for your actions as the
 5 head of Office of Diversion Control.

6 MR. BENNETT: Objection. Vague.

7 Also vague as to time.

8 THE WITNESS: I -- I think that, if
 9 you were more specific, I -- I could give you a
 10 better answer.

11 Do you have a specific instance
 12 where somebody criticized me.

13 Q. Well, Chuck Rosenberg became the
 14 acting administrator of DEA in 2015, right?

15 A. Yes, sir.

16 Q. You were still at DEA at the time
 17 that he became the acting administrator?

18 A. Yes, sir.

19 Q. He was your boss, right?

20 A. Yes, sir.

21 Q. He told Congress shortly after you
 22 left that you were not doing enough to give
 23 guidance to the industry.

24 MS. SINGER: Objection. Foundation.

25 BY MR. EPPICH:

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1 Q. Are you aware of that?
 2 MR. BENNETT: Objection.
 3 Foundation. Objection. Mischaracterizes
 4 administrator Rosenberg's testimony.
 5 MR. UTTER: Same objection.
 6 Go ahead.
 7 THE WITNESS: I am aware that he
 8 made statements like that. I am also aware
 9 that when he made those statements, he was
 10 there for a very brief period of time and never
 11 got a briefing on what the Office of Diversion
 12 Control actually did.
 13 BY MR. EPPICH:
 14 Q. Mr. Rosenberg said to Congress, we
 15 have been opaque. I think we have been slow.
 16 I think we have been opaque. I think we
 17 haven't responded to them. We are trying to
 18 issue guidelines for them more quickly. We are
 19 trying to answer their questions.
 20 Did you know that Mr. Rosenberg said
 21 this to Congress?
 22 MS. SINGER: Objection. Foundation.
 23 If counsel is going to ask the
 24 witness about quotations and documents, I think
 25 the witness should get to see those documents.

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1 MR. BENNETT: I join that objection.
 2 MR. UTTER: Same objection. Lack of
 3 foundation.
 4 Go ahead.
 5 THE WITNESS: I would like to see
 6 what he said exactly.
 7 BY MR. EPPICH:
 8 Q. Are you aware that he said that the
 9 office was too slow, too opaque, are you aware
 10 of that?
 11 A. I'm aware --
 12 MS. SINGER: Objection. Foundation.
 13 MR. BENNETT: Same objections.
 14 MR. UTTER: Same objection.
 15 THE WITNESS: I am aware that he
 16 made statements but I don't have the statements
 17 in front of me and unless you can produce the
 18 statements that I could look at.
 19 BY MR. EPPICH:
 20 Q. Are you aware that Mr. Rosenberg
 21 said that I think we are part of the problem,
 22 meaning I think DEA has been part of the
 23 problem.
 24 Are you aware of that?
 25 MS. SINGER: Objection. Foundation.

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1 MR. UTTER: Same objection.
 2 MR. BENNETT: Same objection.
 3 THE WITNESS: I have no idea of when
 4 he -- why he said that or in what context he
 5 said that.
 6 Do you have the transcripts?
 7 BY MR. EPPICH:
 8 Q. But you are aware of that statement,
 9 sir, aren't you?
 10 A. No, I'm not --
 11 MS. SINGER: Objection.
 12 Mischaracterizes testimony and lack of
 13 foundation.
 14 MR. UTTER: Same objection.
 15 Go ahead.
 16 MR. EPPICH: May we take a break.
 17 MS. SINGER: Sure.
 18 MR. BENNETT: Sure.
 19 MR. EPPICH: Let's go off the
 20 record.
 21 THE VIDEOGRAPHER: We are going off
 22 the record. This is the end of Media Unit No.
 23 1. The time is 9:25.
 24 (A short recess was taken.)
 25 THE VIDEOGRAPHER: We are going back

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1 on the record. This is the start of Media Unit
 2 No. 2. The time is 9:37.
 3 You may proceed, Counsel.
 4 BY MR. EPPICH:
 5 Q. Mr. Rannazzisi, earlier today you
 6 testified that the suspicious order monitoring
 7 regulation is straightforward; is that correct?
 8 A. Yes, sir.
 9 Q. In your opinion, was the -- no
 10 update is needed to that statute or regulation,
 11 correct?
 12 MR. BENNETT: Objection.
 13 MS. SINGER: Objection. Foundation.
 14 Scope.
 15 MR. BENNETT: Objection.
 16 I will instruct the witness that you
 17 are not authorized to disclose any internal
 18 deliberations that you had within the agency.
 19 To the extent you can answer that
 20 question without disclosing internal
 21 deliberations that you had in the agency, you
 22 may answer.
 23 THE WITNESS: I can't answer that
 24 question, it's based on.
 25 BY MR. EPPICH:

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1 Q. Well, it's your opinion that no
2 update to the CSA or the C.F.R. were needed for
3 registrants, correct?

4 MR. BENNETT: Same instruction.

5 MS. SINGER: Same objections.

6 THE WITNESS: I go back to my
7 testimony before. 1301.7 -- 1301.74 was very
8 clear on what a suspicious order is and that's
9 all I can say.

10 BY MR. EPPICH:

11 Q. You are aware that the Controlled
12 Substances Act was enacted in 1971?

13 A. Yes, about that time, yes, sir.

14 Q. In 1971, it's true that there were
15 only a handful of Schedule II controlled
16 substances that were registered?

17 MS. SINGER: Objection. Scope.

18 THE WITNESS: There was a lot -- a
19 lot -- a smaller amount of controlled
20 substances, yes, in 1971.

21 BY MR. EPPICH:

22 Q. It was a much smaller amount, right?

23 A. Yes.

24 MS. SINGER: Objection.

25 BY MR. EPPICH:

1 Q. And registrants were using
2 handwritten suspicious order reports to fulfill
3 their obligations under the Controlled
4 Substances Act?

5 MS. SINGER: Objection. Scope.

6 MR. BENNETT: Objection.

7 Foundation.

8 MR. UTTER: Same objection.

9 THE WITNESS: I have no idea if they
10 were using handwritten --

11 BY MR. EPPICH:

12 Q. But there were no computers, were
13 there?

14 MR. BENNETT: Counsel, could you let
15 him finish his answer, please. I don't think
16 he was finished. I think you interrupted him.

17 THE WITNESS: Again, I have no idea
18 how they were filing suspicious orders either
19 handwritten or otherwise back in the early
20 '70s.

21 BY MR. EPPICH:

22 Q. But there were no computers
23 involved?

24 MS. SINGER: Objection.

25 MR. BENNETT: Objection.

1 Foundation.

2 THE WITNESS: Again, I have no idea
3 how they were filing suspicious orders.

4 BY MR. EPPICH:

5 Q. This was a time before fax machines.

6 MR. BENNETT: Objection.

7 Foundation. Scope.

8 THE WITNESS: I just -- I can't tell
9 you what was done in the early '70s.

10 BY MR. EPPICH:

11 Q. Well, you can agree with me that the
12 distribution model that we see today has been
13 updated and improved since 1971?

14 MR. BENNETT: Objection.

15 MS. SINGER: Objection. Foundation.

16 Scope.

17 MR. BENNETT: Same objection.

18 Vague.

19 MR. UTTER: Same objection.

20 Go ahead.

21 THE WITNESS: I don't -- I don't --
22 could you clarify what you are saying. When
23 you say, "the distribution model," in what part
24 of the distribution model. What are you --

25 BY MR. EPPICH:

1 Q. The way distributors report
2 suspicious orders to the DEA has changed in the
3 last 40 years-plus since 1971; isn't that
4 correct?

5 MR. BENNETT: Objection. Vague.
6 Objection. Lacks foundation. Objection.
7 Scope.

8 MR. UTTER: Same objection.
9 Go ahead.

10 THE WITNESS: I would say that the
11 regulation hasn't changed. It's the same
12 regulation but I am sure as technology
13 increases or technology gets better, yes, there
14 was a change in the way they reported, yes.

15 BY MR. EPPICH:

16 Q. And as technology has improved and
17 changed over time, it's still your opinion that
18 no update to the CSA is needed to account for
19 those changes?

20 MS. SINGER: Objection. Foundation.
21 Scope.

22 THE WITNESS: I have --
23 MR. BENNETT: Objection. Again, I
24 will instruct the witness that he is not
25 authorized to disclose any internal

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1 deliberations that occurred at the agency while
2 he was there.

3 To the extent that you can answer
4 this question without disclosing internal
5 deliberations, you may answer.

6 THE WITNESS: I have no control over
7 the CSA. The CSA is controlled by Congress and
8 the Administration when the President signs a
9 piece of legislation, so I have no control over
10 what the President or Congress does in relation
11 to legislation.

12 BY MR. EPPICH:

13 Q. In your personal opinion, do you
14 think that the Controlled Substances Act and
15 its corresponding regulations should be updated
16 to account for the changes in technology and
17 the passage of time since 1971?

18 MS. SINGER: Same objection and
19 asked and answered.

20 MR. BENNETT: I will object. Scope.

21 You are not authorized to give
22 personal opinions regarding nonpublic facts or
23 information you acquired in the performance of
24 your official duties.

25 To the extent that you can form an

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1 opinion that is based on public facts or
2 information you acquired outside of the
3 performance of your official duties, you may
4 answer.

5 THE WITNESS: Again, I have to go
6 back to -- I have no control over what is
7 legislated by Congress or what is signed by the
8 President, so I can't answer that question.

9 BY MR. EPPICH:

10 Q. Sitting here today, you have no
11 personal opinion on the subject?

12 MS. SINGER: Same objections.

13 MR. BENNETT: Objection. Same
14 instruction.

15 THE WITNESS: I have no opinion on
16 that.

17 BY MR. EPPICH:

18 Q. Before the break, we were discussing
19 some criticism within the DEA.

20 Do you remember that testimony?

21 MS. SINGER: Objection.

22 Mischaracterizes prior testimony.

23 MR. BENNETT: Objection.

24 MR. SMITH: Same objection.

25 BY MR. EPPICH:

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1 Q. Do you remember that discussion?

2 A. I remember the discussion that we
3 had prior to taking the break, yes.

4 Q. Mr. Rannazzisi, are you partially
5 responsible for the opioid crisis?

6 MS. SINGER: Objection. Scope.

7 MR. BENNETT: Objection.

8 Argumentative. Objection. Vague. And
9 objection. Scope.

10 If you understand the limitations in
11 your scope authorization.

12 MR. UTTER: Go ahead.

13 THE WITNESS: I don't believe that I
14 am responsible for the opioid crisis, no.

15 BY MR. EPPICH:

16 Q. Are you a paid consultant for the
17 plaintiffs' lawyers?

18 MR. BENNETT: Objection. Vague.

19 MS. SINGER: Objection.

20 THE WITNESS: I'm a paid consultant.

21 BY MR. EPPICH:

22 Q. You are a paid consultant for
23 plaintiffs' lawyers, correct?

24 MS. SINGER: Objection. Vague.

25 MR. UTTER: Are you asking in this

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1 litigation?

2 MR. EPPICH: I am asking if he is a
3 consultant for plaintiffs' lawyers that are
4 involved in the opioid litigation.

5 MR. UTTER: I will instruct you not
6 to answer to the extent it relates to any
7 litigation other than the present litigation.

8 THE WITNESS: No, I am not a
9 consultant for this present litigation.

10 MS. MAINIGI: Special Master Cohen,
11 I do believe that that type of question was
12 allowed in Kyle Wright's deposition. I don't
13 want to interrupt the flow, but I would just
14 ask you make a ruling as to whether we are
15 allowed to ask whether this witness acts as a
16 consultant to any plaintiff in any opioid
17 litigation.

18 MR. UTTER: That question was not
19 posed in Karl Wright's deposition. It had to
20 do with him being a consultants to Motley Rice
21 which was the current litigation.

22 MS. MAINIGI: I do not believe that
23 is correct. I believe he was identified as a
24 consultant for Rick Fields. It was not in this
25 litigation.

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1 SPECIAL MASTER COHEN: I don't know
 2 whether -- why don't you ask your question that
 3 tees it up. I'm not sure that you teed it up
 4 exactly.

5 BY MR. EPPICH:

6 Q. Mr. Rannazzisi, are you a consultant
 7 in -- to the plaintiffs' attorneys that are
 8 involved in the opioid litigation?

9 MS. SINGER: Objection. Vague.

10 MR. UTTER: Object. Work product
 11 privilege as it relates to litigation not --
 12 that is not the present litigation.

13 MS. MAINIGI: Kyle Wright has
 14 identified -- identified himself as a
 15 consultant to Rick Fields who is a plaintiff's
 16 attorney representing -- a plaintiff's attorney
 17 in opioid litigation, but not the MDL.

18 SPECIAL MASTER COHEN: Well, with
 19 Kyle Wright then I'm not sure it's dispositive.
 20 It seems to me that the witness is being asked
 21 if he is a consulting expert, and normally that
 22 is something that is not divulged.

23 MR. EPPICH: May I introduce an
 24 exhibit?

25 SPECIAL MASTER COHEN: Sure.

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1 MR. EPPICH: This will be marked as
 2 Exhibit 4.
 3 (Deposition Exhibit 4 was marked for
 4 identification.)

5 BY MR. EPPICH:

6 Q. Exhibit 4 is a copy of the October
 7 15, 2017 article in the Washington Post titled:
 8 "Who is Joe Rannazzisi, the DEA man who fought
 9 the drug companies and lost."

10 Mr. Rannazzisi, have you seen this
 11 document before?

12 A. I have seen this article before,
 13 yes.

14 Q. Let's turn to the last page of the
 15 article.

16 MR. UTTER: Excuse me. Could the
 17 witness please review the article so he has the
 18 context of any questions.

19 MR. EPPICH: Yes.

20 BY MR. EPPICH:

21 Q. Mr. Rannazzisi, please take your
 22 time with the document.

23 A. Thank you.

24 Okay.

25 Q. Mr. Rannazzisi, on Page 3 of this

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1 document, it is the fifth full paragraph down,
 2 it says: "Today, Rannazzisi is a consultant
 3 for a team of lawyers suing the opioid
 4 industry. Separately, 41 state attorney
 5 generals have banded together to investigate
 6 the industry. Hundreds of counties, cities and
 7 towns are also suing."

8 Mr. Rannazzisi, you told the
 9 Washington Post that you were a consultant to
 10 the opioid industry -- to the team of lawyers
 11 suing the opioid industry; is that correct?

12 MS. SINGER: Objection. Lack of
 13 foundation. Mischaracterizes what the article
 14 says.

15 MR. UTTER: Same objection.

16 You can answer that question.

17 THE WITNESS: I don't recall exactly
 18 what I told the Post but I believe I did say
 19 that I was a consultant but I don't know to
 20 what detail I talked about that.

21 BY MR. EPPICH:

22 Q. So let me ask you my question again:
 23 Are you a paid consultant for the plaintiffs'
 24 lawyers in the opioid litigation?

25 MS. SINGER: Same objection.

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1 MR. UTTER: Same instruction not to
 2 answer.

3 SPECIAL MASTER COHEN: I think you
 4 need to answer that question yes or no.

5 MR. UTTER: Go ahead.

6 THE WITNESS: Yes.

7 BY MR. EPPICH:

8 Q. Which cases are you a paid
 9 consultant for plaintiffs' lawyers in the
 10 opioid litigation?

11 MR. UTTER: I instruct you not to
 12 answer. Work product privilege, other cases
 13 besides this one.

14 SPECIAL MASTER COHEN: That one I
 15 don't think you need to.

16 BY MR. EPPICH:

17 Q. When did you start becoming a
 18 consultant to plaintiffs' lawyers?

19 MS. SINGER: Objection. Scope.

20 MR. UTTER: Go ahead. You can
 21 answer that.

22 THE WITNESS: Yeah. I am just
 23 trying -- it was sometime I believe in --
 24 sometime during 2016.

25 BY MR. EPPICH:

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1 Q. Are you a paid consultant for any
2 attorney generals that are involved in the
3 opioid litigations?

4 MS. SINGER: Same objection.

5 To the extent that Mr. Rannazzisi
6 is, I don't know, is working with any attorneys
7 general I believe that is certainly beyond the
8 scope and would reveal confidential law
9 enforcement information that should not be
10 discussed.

11 MS. MAINIGI: Attorneys general that
12 are suing the opioid industry as reflected in
13 the Washington Post article.

14 MS. SINGER: First of all, that's
15 not the question. Second of all, to the extent
16 he is a nondisclosed consulting expert, I don't
17 think he should answer that question.

18 MR. UTTER: To the extent the
19 question calls for you to disclose you're a
20 consulting expert on a litigation, I will
21 instruct you not to answer. Otherwise, you can
22 answer the question.

23 MR. LIVINGSTON: He was hired with
24 knowledge that this person was going to be a
25 key witness, a key fact witness, so I don't

1 think that the usual, you know, consultant
2 privilege applies.

3 MR. UTTER: I appreciate your
4 thought, but I don't -- the rule doesn't say
5 that.

6 SPECIAL MASTER COHEN: Why don't you
7 ask --

8 MR. LIVINGSTON: We can just go and
9 hire as many --

10 SPECIAL MASTER COHEN: There is no
11 argument between counsel.

12 If you can answer the question in
13 the way as your attorney instructed you.

14 THE WITNESS: Could you repeat the
15 question.

16 BY MR. EPPICH:

17 Q. Yes, sir. Are you a paid consultant
18 for any attorney generals that are involved in
19 the opioid litigation?

20 MR. UTTER: You can answer the
21 question to the extent it doesn't reveal your
22 consultation in litigation outside the present
23 litigation.

24 THE WITNESS: My agreement is with
25 Richard Fields.

1 BY MR. EPPICH:

2 Q. Did Mr. Fields approach you or did
3 you approach Mr. Fields?

4 MR. UTTER: I instruct you not to
5 answer, work product.

6 SPECIAL MASTER COHEN: I am not
7 overruling that.

8 MS. MAINIGI: Why is that
9 privileged?

10 SPECIAL MASTER COHEN: For the same
11 reason that I would not uphold -- for the same
12 reason I wouldn't direct a witness that is
13 yours to divulge the nature of the relationship
14 that the expert or consultant has with you. I
15 play it the same way.

16 What you are after is information
17 that would go to his credibility and bias. You
18 have already got it.

19 MS. MAINIGI: We've already got it,
20 but how -- who approached who is not privileged
21 information.

22 SPECIAL MASTER COHEN: I'm not going
23 to -- I'm not going to argue over my rulings.

24 BY MR. EPPICH:

25 Q. Mr. Rannazzisi, did you understand

1 that you would get paid for your work with the
2 Fields firm?

3 MR. UTTER: You can answer that.

4 THE WITNESS: Yes.

5 BY MR. EPPICH:

6 Q. Did you sign a contract with them?
7 A. Yes.

8 Q. How much are you paid per hour?

9 MR. UTTER: You can answer.

10 THE WITNESS: \$500 an hour.

11 BY MR. EPPICH:

12 Q. And how many hours have you billed
13 to date?

14 MR. UTTER: That I would instruct
15 you not to answer.

16 THE WITNESS: I don't --

17 MR. UTTER: That I would instruct
18 you not to answer.

19 SPECIAL MASTER COHEN: No, you can
20 answer that question.

21 MR. UTTER: Go ahead.

22 THE WITNESS: I don't know.

23 BY MR. EPPICH:

24 Q. Do you know how much money you
25 received from the Fields firm to date?

1 MR. UTTER: Go ahead.
 2 THE WITNESS: I don't know.
 3 BY MR. EPPICH:
 4 Q. Is it more than \$10,000?
 5 A. Yes.
 6 Q. More than \$50,000?
 7 A. Yes.
 8 Q. More than \$100,000?
 9 A. I would say yes.
 10 Q. More than a quarter million dollars?
 11 A. No.
 12 Q. Are you billing the Fields firm for
 13 your testimony here today?
 14 A. No.
 15 Q. Are you billing the Fields firm for
 16 your preparation sessions for this deposition
 17 today?
 18 A. No.
 19 Q. Are you being compensated by any
 20 lawyer or entity for your testimony here today
 21 or the preparations for your testimony here
 22 today?
 23 A. Well, I was under the impression I
 24 got a witness fee from the defendants.
 25 Q. Other than that?

1 A. No.
 2 Q. Now have you talked with the
 3 plaintiffs' firms about the work you did while
 4 you were at the DEA?
 5 MS. SINGER: Objection. Vague.
 6 MR. UTTER: Objection.
 7 I instruct you not to answer that.
 8 I'm going to instruct you not to answer that.
 9 THE WITNESS: I didn't hear the
 10 question. Can you repeat the question, please.
 11 BY MR. EPPICH:
 12 Q. Have you talked with the plaintiffs'
 13 firms that you are hired by about the work you
 14 did while you were at the DEA?
 15 MR. UTTER: Objection.
 16 I instruct you not to answer.
 17 BY MR. EPPICH:
 18 SPECIAL MASTER COHEN: I am not
 19 overruling that.
 20 BY MR. EPPICH:
 21 Q. Did you get any kind of approval
 22 from the United States Government before you
 23 agreed to take a consulting role with the
 24 plaintiffs' lawyers?
 25 MR. UTTER: You can answer that.

1 THE WITNESS: Yes.
 2 BY MR. EPPICH:
 3 Q. And is that approval in writing?
 4 A. Yes.
 5 Q. Do you still have a copy of that
 6 approval?
 7 A. I don't -- I don't know if I still
 8 have a copy of it. But the person who did the
 9 approval was Roberto Dibella.
 10 Q. Do you recall when that approval was
 11 issued?
 12 A. It was right about the time -- right
 13 after Mr. Fields approached me.
 14 Q. And that was in 2016?
 15 A. I believe it was in '16, yes.
 16 Q. You have a personal attorney here
 17 today?
 18 A. Yes, sir.
 19 Q. Who is paying his fees?
 20 A. I -- we just have an agreement that
 21 Mr. Utter would represent me. There's no fee.
 22 There's no fee.
 23 Q. You are not paying Mr. Utter's fee
 24 today as he sits here today?
 25 A. No, sir.

1 Q. Are you aware that Mr. Utter
 2 represents plaintiffs in the opioid lawsuit?
 3 A. I believe Mr. Utter does represent
 4 plaintiffs, yes.
 5 Q. And you have had conversations with
 6 Mr. Utter about the opioid lawsuit?
 7 MR. UTTER: I'm going to object and
 8 instruct you not to answer.
 9 SPECIAL MASTER COHEN: It's a yes or
 10 no question. You can answer yes or no without
 11 going into the substance of those
 12 conversations.
 13 THE WITNESS: Could you repeat.
 14 MR. UTTER: Go ahead.
 15 THE WITNESS: Could you repeat the
 16 question one more time.
 17 BY MR. EPPICH:
 18 Q. Have you had conversations with Mr.
 19 Utter about the opioid lawsuit?
 20 A. Yes.
 21 Q. Was Mr. Utter referred to you?
 22 MR. UTTER: I will instruct you not
 23 to answer that as part of the consultation work
 24 with Mr. Fields.
 25 SPECIAL MASTER COHEN: I actually

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1 don't understand the question. I'm sorry.

2 BY MR. EPPICH:

3 Q. How did you become acquainted with
4 Mr. Utter? Was he referred to you by the
5 Fields law firm?

6 MR. UTTER: That you can answer.

7 THE WITNESS: I was working with Mr.
8 Utter. I got to know him during several
9 meetings we have had and I asked him.

10 BY MR. EPPICH:

11 Q. Have you been asked to testify in
12 any of the opioid litigations?

13 MR. UTTER: You can answer.

14 THE WITNESS: Asked to testify?

15 BY MR. EPPICH:

16 Q. Yes, sir.

17 A. I'm sure people have asked me over
18 the last year or so, two years.

19 Q. Well --

20 MR. BENNETT: And I will interject
21 an objection as to vague, whether you mean
22 testify as an expert because he is testifying
23 now.

24 MR. EPPICH: Fair enough, James.

25 Thank you.

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1 BY MR. EPPICH:

2 Q. Have you been asked to testify as an
3 expert in any opioid litigation?

4 MR. UTTER: I object and instruct
5 you not to answer unless you are aware whether
6 you have been designated as a testifying expert
7 in that case.

8 THE WITNESS: I have not been
9 designated as a testifying expert, but I am
10 sure I have been asked over the last year or so
11 from many different law firms.

12 BY MR. EPPICH:

13 Q. In fact, you already appeared before
14 the court in this multidistrict litigation,
15 correct?

16 A. That's true.

17 Q. Were you paid for that testimony?

18 A. Yes, I was paid.

19 Q. That was part of your consultancy
20 with the Fields firm?

21 A. It wasn't part of the agreement with
22 Mr. Fields.

23 Q. Who was -- which agreement was that
24 testimony for?

25 A. It wasn't really an agreement. I

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1 was just asked to appear. It was with Motley
2 Rice.

3 Q. Did Motley Rice pay you for your
4 time?

5 A. Yes.

6 Q. Do you have an agreement with Motley
7 Rice?

8 A. I don't believe I have an agreement
9 with Motley Rice, no.

10 Q. Are you aware that the Motley Rice
11 firm represents plaintiffs in this lawsuit?

12 A. Yes.

13 Q. Do you have a current engagement
14 with the Motley Rice firm for purposes of this
15 opioid lawsuit?

16 A. No. That was a one-time appearance
17 to explain ARCOS and quotas. That was it.

18 Q. Now, in addition to getting paid
19 consultant fees by the plaintiffs' lawyers, you
20 advertise on the Internet as a paid speaker on
21 the opioid crisis; is that true?

22 MS. SINGER: Objection.

23 Mischaracterizes the witness's testimony.

24 MR. UTTER: Go ahead.

25 THE WITNESS: I don't advertise at

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1 all.

2 BY MR. EPPICH:

3 Q. But it's true that you are a paid
4 speaker on the opioid crisis?

5 A. I do paid speaking engagements but
6 there is no advertising. I also do free
7 speaking engagements.

8 Q. How much do you get paid for your
9 speaking engagements on the opioid crisis?

10 A. It depends on the audience. If it's
11 a parent's group that lost children or loved
12 ones, it's free. They pay me to come out and
13 talk and -- they pay me my expenses so they
14 will pay my flight. Generally, I don't even
15 take hotel. They pay my flight out, I speak
16 and then I leave.

17 If it's a group of doctors, it might
18 be anywhere from 2 to \$5,000. If it's a group
19 of -- another type of group, you know, it just
20 depends on the group and it depends on what
21 they could pay, I mean, that's -- but for the
22 most part, it's really not set in stone.

23 Q. What is the most you have been paid
24 for a speaking engagement on the opioid crisis?

25 A. The most? \$5,000.

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1 Q. Have you signed any book deals on
2 the opioid crisis?

3 A. No.

4 Q. Are you paid for any TV appearances
5 relating to the opioid crisis?

6 A. I don't do television.

7 Q. Are you being paid for any radio
8 appearances, podcasts?

9 A. No. I never take any money for
10 podcasts.

11 Q. I want to talk to you briefly about
12 your conduct with respect to documents during
13 your time at the DEA.

14 A. Yes.

15 Q. You sent e-mails from your
16 government e-mail address to your personal
17 e-mail address; is that true?

18 A. Uh-huh. Yes.

19 Q. You sent work-related e-mails to
20 your personal e-mail address on multiple
21 occasions?

22 MS. SINGER: Objection. Scope.

23 BY MR. EPPICH:

24 Q. Isn't that true?

25 A. Yes.

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1 Q. And this was over the course of
2 several years, wasn't it?

3 A. Yes.

4 Q. These e-mails would often have
5 government documents attached to them.

6 A. That's true, yes.

7 Q. In fact, other DEA employees knew to
8 send you e-mail at both your work and personal
9 e-mail addresses, didn't they?

10 A. Well, I don't know if other
11 employees knew that. It just depends on where
12 we were. We were having issues with our
13 phones. And sometimes it would just be easier
14 to send certain things to my personal account.

15 Q. Do you still maintain copies of
16 these documents and e-mails in your personal
17 accounts?

18 A. Everything that I had in the
19 personal account that I found I turned over to
20 the Department of Justice.

21 Q. But you still have copies of those
22 documents, don't you?

23 A. Well, I was --

24 MS. SINGER: Objection.

25 Argumentative.

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1 THE WITNESS: I was told I couldn't
2 get rid of them until the end. So yes.

3 BY MR. EPPICH:

4 Q. And did you share any of these
5 documents with "60 Minutes" or the Washington
6 Post?

7 A. No, sir.

8 Q. You didn't give "60 Minutes" the
9 Washington Post documents at all?

10 A. No.

11 Q. Did you share any of these documents
12 with the plaintiffs' lawyers --

13 A. No.

14 Q. -- that you're doing consulting work
15 for?

16 A. Absolutely not.

17 MR. EPPICH: Thank you, Mr.

18 Rannazzisi.

19 When pass you to one of my
20 colleagues.

21 Let's go off the record for a
22 minute.

23 THE VIDEOGRAPHER: We are going off
24 the record.

25 The time is 10:04.

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1 (A short recess was taken.)

2 THE VIDEOGRAPHER: We are going back
3 on the record.

4 The time is 10:08.

5 You may proceed, Counsel.

6 EXAMINATION BY COUNSEL FOR MALLINCKRODT

7 PHARMACEUTICALS AND SPECGX LLC

8 BY MR. O'CONNOR:

9 Q. Good morning, Mr. Rannazzisi.

10 A. Good morning.

11 Q. My name is Andrew O'Connor. I
12 represent one of the manufacturers in the case.
13 I'll be asking you some questions.

14 A. Sure.

15 Q. I want to return to the topic of
16 quotas for a few minutes.

17 DEA considered a number of different
18 factors when determining quotas for controlled
19 substances, correct?

20 A. Yes.

21 Q. And those factors are set by statute
22 and regulation, true?

23 A. Yes.

24 Q. They include the total net disposal
25 of controlled substances in prior years?

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1 A. Yes.
 2 Q. They include trends in is the
 3 national rate of net disposal?
 4 A. Yes.
 5 Q. Total actual or estimated
 6 inventories?
 7 A. Yes.
 8 Q. Changes in accepted medical use?
 9 A. Yes.
 10 Q. Economic and physical availability
 11 of raw materials?
 12 A. Yes.
 13 Q. Any emergencies that might have
 14 occurred?
 15 A. Yes.
 16 Q. And any other factors that the DEA
 17 determines to be relevant, correct?
 18 A. Yes.
 19 Q. And in setting quotas for controlled
 20 substances, the DEA considers input from a
 21 variety of sources, true?
 22 MS. SINGER: Objection. Vague.
 23 MR. BENNETT: I join that objection.
 24 THE WITNESS: Could you repeat the
 25 question. I'm sorry.

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1 BY MR. O'CONNOR:
 2 Q. Sure.
 3 In setting quotas for controlled
 4 substances, the DEA considers information from
 5 multiple sources, correct?
 6 A. Yes.
 7 MS. SINGER: Objection. Vague.
 8 BY MR. O'CONNOR:
 9 Q. Those sources include the Food &
 10 Drug Administration?
 11 A. Yes.
 12 Q. And in every year while you were the
 13 head of the Office of Diversion Control, DEA
 14 considered input from the FDA, correct?
 15 A. We considered -- yes, we did.
 16 Q. In addition to setting quotas
 17 regarding the total amount of controlled
 18 substances that are allowed to be produced, DEA
 19 also sets quotas for individual registrants,
 20 correct?
 21 MS. SINGER: Objection. Compound.
 22 THE WITNESS: Could you rephrase
 23 that question.
 24 BY MR. O'CONNOR:
 25 Q. Sure.

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1 DEA sets quotas for individual
 2 manufacturers, correct?
 3 A. Talking about bulk API
 4 manufacturers?
 5 Q. Let's start with that.
 6 A. Yes.
 7 Q. Okay. And DEA also sets individual
 8 procurement quota for dosage manufacturers?
 9 A. Yes. Correct.
 10 Q. Okay. And in assigning those
 11 quotas, DEA must stay within the aggregate
 12 production quota that it has set, correct?
 13 A. The aggregate production quota is
 14 the ceiling. We can't go above that by
 15 statute.
 16 Q. Understand.
 17 And that ceiling reflects the
 18 legitimate scientific, medical and industrial
 19 needs of the United States, correct?
 20 A. In addition to import, export --
 21 export requirements and -- there are a couple
 22 other factors, yeah.
 23 Q. When assigning a particular dosage
 24 manufacturer a procurement quota, if the DEA
 25 knew that that registrant was diverting

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1 controlled substances, would it grant the
 2 registrant a quota?
 3 MR. BENNETT: Objection.
 4 MS. SINGER: Objection.
 5 Hypothetical.
 6 MR. BENNETT: Objection. Incomplete
 7 hypothetical. And calls for speculation.
 8 Scope.
 9 MR. UTTER: Same objections.
 10 Go ahead.
 11 THE WITNESS: I -- I can't answer
 12 that question. Because it's -- every -- we --
 13 everything is very fact-specific when it comes
 14 to manufacturers in quota.
 15 BY MR. O'CONNOR:
 16 Q. But if -- if you knew for a fact
 17 that a manufacturer is diverting controlled
 18 substances, you would not give that
 19 manufacturer a quota --
 20 MS. SINGER: Objection.
 21 BY MR. O'CONNOR:
 22 Q. -- correct?
 23 MS. SINGER: Hypothetical.
 24 MR. BENNETT: Objection. Incomplete
 25 hypothetical. Calls for speculation. And

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1 scope.

2 MR. UTTER: Same objection.

3 Go ahead.

4 THE WITNESS: I -- I can't answer
5 that. Because there's -- there's processes in
6 place to review and make a determination that
7 has other -- there's other components involved,
8 not just the Office of Diversion Control.

9 BY MR. O'CONNOR:

10 Q. Was there ever a time at DEA that
11 the DEA granted a procurement quota to a
12 manufacturer it knew was diverting products?

13 MR. BENNETT: Objection. Scope.

14 You're not authorized to disclose
15 information regarding any specific nonpublic
16 DEA investigations or activities.17 To the extent that there's public
18 information that allows you to answer this
19 question, you may. But you may not disclose
20 any specific DEA investigations or activities
21 that are nonpublic.22 THE WITNESS: I can't answer that
23 question.

24 BY MR. O'CONNOR:

25 Q. Mr. Rannazzisi, would you agree with

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1 me that it's important that the DEA grant
2 enough quota so that legitimate patients have
3 access to necessary medication?

4 MS. SINGER: Objection. Vague.

5 MR. BENNETT: Objection. Scope.

6 MR. UTTER: Go ahead.

7 THE WITNESS: Quota, under 826, is
8 based on legitimate medical, scientific,
9 industrial export needs of the country.

10 BY MR. O'CONNOR:

11 Q. Would you agree that granting
12 adequate quota is necessary to ensure an
13 adequate and uninterrupted supply of
14 pharmaceutical-controlled substances?15 A. I can only agree with what the
16 statute requires. And the statute requires
17 that we allot quota to meet the needs of the
18 medical, industrial and scientific requirements
19 of the country.20 Q. And if you don't grant enough quota,
21 there can be drug shortages, correct?22 MS. SINGER: Objection. Vague.
23 Objection. Scope.24 THE WITNESS: I actually -- no.
25 That's not correct.

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1 BY MR. O'CONNOR:

2 Q. It's not correct that, if there is
3 not enough quota granted, that there could be
4 drug shortages?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: It -- it's not correct
7 because the Drug Enforcement Administration has
8 no authority to dictate what exactly a
9 manufacturer does once they're issued with
10 quota.11 So there may be a situation where a
12 manufacturer decides to divert the amount of
13 quota authority he has to another product,
14 therefore creating a shortage.15 It's not necessarily the amount of
16 quota. It's what they're doing with the quota
17 that could create the shortage.

18 BY MR. O'CONNOR:

19 Q. But would you agree that, if the DEA
20 set the quota far too low, that could result in
21 a drug shortage?

22 MS. SINGER: Objection.

23 Hypothetical. Calls for speculation.

24 MR. BENNETT: Objection. Incomplete
hypothetical. Calls for speculation. Scope.

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1 MR. UTTER: Go ahead.

2 THE WITNESS: Again, it -- like
3 everything else, with quota, it -- I have to --
4 I'd have to have a complete set of facts in
5 order to answer that question.6 MR. O'CONNOR: Okay. Mr.
7 Rannazzisi, I'm going to show you a document.
8 Counsel.9 MR. UTTER: Is this marked as an
10 exhibit or --

11 MR. O'CONNOR: Yes.

12 We'll mark that. I think we're on
13 number --

14 THE REPORTER: Exhibit 5.

15 MR. O'CONNOR: -- 6.

16 5 or 6.

17 THE REPORTER: 5.

18 (Deposition Exhibit 5 was marked for
19 identification.)20 MS. SINGER: What is the exhibit
21 number?

22 THE REPORTER: Exhibit 5.

23 MS. SINGER: Thank you.

24 MR. O'CONNOR: Just for the record,
25 this is Bates No. US-DEA-00011611.

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1 BY MR. O'CONNOR:

2 Q. Mr. Rannazzisi, do you recognize
3 this document?

4 A. Yes, I do.

5 Q. You wrote it, correct?

6 A. Yes.

7 Q. Okay.

8 A. I was -- I was part of -- I was part
9 of the writing team.10 Q. Okay. And if you flip to the back
11 page, that's your signature or someone signing
12 on your behalf, correct?13 A. That was one of my execs signing on
14 my behalf. Because I was out of town when it
15 was finalized.

16 Q. But you approved of the letter?

17 A. Yes. I -- I had to read it to
18 approve it.19 Q. And I'm going to direct your
20 attention to Page 10 of the document.21 A. Would you just read for me the first
22 sentence of the conclusion.23 A. "There can be no doubt that drug
24 shortages adversely affect the public health."

25 Q. Based on your knowledge and

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1 experience at DEA, do you agree with that
2 statement, as you sit here today?

3 MS. SINGER: Objection. Scope.

4 THE WITNESS: Drug shortages can
5 affect the public health. Absolutely.

6 BY MR. O'CONNOR:

7 Q. Okay. And are you aware that the
8 DEA has been criticized for not simply lowering
9 the quota to help address the problem of opioid
10 abuse?

11 MS. SINGER: Objection.

12 MR. BENNETT: Vague.

13 MS. SINGER: Objection. Foundation.

14 MR. BENNETT: Vague as to time.

15 MR. UTTER: Same objection.

16 Go ahead. You can answer.

17 THE WITNESS: I'm just -- where did
18 -- I -- I -- I am aware that that has actually
19 -- that people have talked about that, both in
20 Congress and -- and in the private industry,
21 yes.

22 BY MR. O'CONNOR:

23 Q. But the truth is DEA can't simply
24 turn off the supply of opioids through quota
25 because that would hurt legitimate patients,

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1 correct?

2 MS. SINGER: Objection. Compound.
3 Objection. Foundation.4 MR. BENNETT: Objection. Form.
5 Calls for legal conclusion. Scope.6 THE WITNESS: DEA is required, under
7 826, to set the quota to meet the legitimate
8 medical, scientific, industrial needs and
9 export needs of the country. And that's what
10 we're required to do.

11 BY MR. O'CONNOR:

12 Q. And if you don't set that number
13 high enough, that might prevent legitimate
14 patients from receiving medication, correct?15 MS. SINGER: Objection. Asked and
16 answered. Vague.17 MR. BENNETT: Objection. Incomplete
18 hypothetical.19 THE WITNESS: Again, I can only go
20 back to 826 and tell you exactly what the
21 statute says.

22 BY MR. O'CONNOR:

23 Q. Okay. Mr. Rannazzisi, have you ever
24 appeared on a podcast?

25 A. Yes. I've appeared on several

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1 podcasts.

2 Q. Have you appeared on one called
3 Cover2 Resources?

4 A. Yes.

5 MR. O'CONNOR: I'm going to mark
6 Exhibit No. 6.7 (Deposition Exhibit 6 was marked for
8 identification.)

9 BY MR. O'CONNOR:

10 Q. This is a certified transcript of an
11 episode of the Cover2 Resources podcast in
12 which you appeared.13 I'll direct your attention to Page
14 25 of this transcript.15 At the top of the page you say:
16 "It's very easy to say, 'Well, all DEA has to
17 do is cut the quota.' The problem is you can't
18 cut a quota. In a quota system there's a
19 hundred -- well, let's just come up with a
20 number -- 100 kilograms of a certain -- of
21 oxycodone, the basic class, which is what we
22 set the quota in a basic class. A hundred
23 kilograms of oxycodone in the basic class form
24 is the quota, and that's based on downstream
25 sales, for the most part."

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1 Now, do you see where I am here?

2 A. Yeah. I am following you along.

3 Q. Okay. Now, I'd -- I'd like for you
4 to take a look at what you say in the next
5 sentence that begins "So."

6 Could you read that for me?

7 MR. UTTER: Before you do that, make
8 sure you understand the context in which this
9 is all based at.

10 THE WITNESS: Yeah. What I was --

11 MR. UTTER: And I object to the fact
12 that there's no foundation to -- to the
13 question. And he's reading the document into
14 the record without that foundation.

15 THE WITNESS: Could I read a couple
16 of pages before?

17 MR. O'CONNOR: Sure.

18 THE WITNESS: Thanks.

19 Okay.

20 BY MR. O'CONNOR:

21 Q. Okay. And could you read, please,
22 the sentence that begins "So if I know."

23 MR. UTTER: Object. Foundation.

24 THE WITNESS: What page is that?

25 BY MR. O'CONNOR:

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1 Q. Page 25?

2 A. 25. Oh.

3 "So if I know that a hundred
4 kilograms is the quota, and that's what's going
5 to cover all the downstream sales and all the
6 research and everything else, and I cut the
7 quota, just cut it by 80 -- by 20 percent, say,
8 well, that sound like a great idea. But
9 remember, you have drug seekers competing" for
10 real life patients -- "with real life patients
11 for that quota."

12 Q. Do you agree with that statement, as
13 you sit here today?

14 MS. SINGER: Objection. The
15 document is out of context.

16 MR. UTTER: Go ahead.

17 THE WITNESS: I'm sorry.

18 BY MR. O'CONNOR:

19 Q. Do you agree with that statement?

20 A. Yes.

21 Q. Because if you were to just cut the
22 quota by 80 or even 20 percent, there would be
23 consequences for real life patients, correct?

24 A. Yes.

25 Q. Thank you.

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1 Earlier today you mentioned the
2 distributor initiative.

3 Are you familiar with what that is?

4 A. Yes.

5 Q. Fair to say that the distributor
6 initiative involved meetings with distributors
7 on the subject of regulatory compliance?

8 MR. BENNETT: Objection.

9 Foundation.

10 THE WITNESS: The distributor
11 initiative was created to -- to reemphasize
12 what requirements under 21 C.F.R. and 21 --
13 the -- the USC were to the distributors to
14 ensure that they were acting appropriately and
15 within -- complying with the act and the
16 regulations.

17 BY MR. O'CONNOR:

18 Q. During your time as the office -- as
19 the head of the Office of Diversion Control,
20 was there ever a manufacturer initiative?

21 MR. BENNETT: Objection. Vague.

22 THE WITNESS: We -- we -- a
23 manufacturer -- a coincident activity to
24 manufacturing is distributors. And
25 manufacturers know that they are -- they're

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1 held to the same standards as distributors.

2 BY MR. O'CONNOR:

3 Q. So in answer to my question, there
4 was not a manufacturers --

5 MR. BENNETT: Objection.

6 BY MR. O'CONNOR:

7 Q. -- initiative, correct?

8 MR. BENNETT: Objection.

9 Misstates --

10 MS. SINGER: Argumentative.

11 Mischaracterizes the witness's testimony.

12 THE WITNESS: Again, a distributor
13 initiative would encompass manufacturers.
14 Because a coincident activity to manufacturing
15 is distributing.

16 BY MR. O'CONNOR:

17 Q. And during the course of the
18 distributor initiative, did you personally meet
19 with any manufacturers?

20 A. During the distributor initiative, I
21 only met with one company.

22 Q. Was that company a manufacturer?

23 A. It was a distributor.

24 Q. To your knowledge, did anyone on
25 your team meet personally with a manufacturer

Page 109

1 during the distributor initiative meetings?

2 A. I don't remember exactly. It seems

3 to me that Southwood was actually a

4 manufacturer. And I'm pretty sure they were

5 part of the initiative.

6 Q. As you sit here today, other than

7 Southwood, you don't recall any meetings with

8 manufacturers as part of the distributor

9 initiative, correct?

10 MS. SINGER: Objection.

11 Mischaracterizes the witness's testimony.

12 THE WITNESS: I don't recall -- you

13 know, again, we met with a lot of people. I

14 don't recall a specific instance or a specific

15 manufacturer. But that doesn't mean that they

16 weren't. I just don't recall one.

17 BY MR. O'CONNOR:

18 Q. Would you agree with me that, when

19 it comes to suspicious order monitoring,

20 providing registrants with clear guidance is

21 important?

22 MS. SINGER: Objection. Vague.

23 MR. BENNETT: Objection. Vague.

24 Objection. Scope.

25 THE WITNESS: The registrants had

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1 clear guidance. 1301.74(b) specifically says a

2 suspicious order is orders of unusual size,

3 frequency, or substantially deviating from the

4 normal ordering pattern. I think that's pretty

5 straightforward.

6 BY MR. O'CONNOR:

7 Q. Are you familiar with the phrase

8 "Know your customer's customer"?

9 A. I've heard that phrase. But that

10 phrase was used after I -- I left.

11 Q. Okay. So during your time as the

12 head of the Office of Diversion Control, "Know

13 your customer's customer" was not a term that

14 you were familiar with?

15 A. No. Due diligence was the term we

16 utilized. Due diligence on your customers.

17 Making sure you know your customers and know

18 what they're doing.

19 Q. Okay. Would you agree that the DEA

20 did not expect manufacturers to police the

21 entire supply chain?

22 MR. BENNETT: Objection. Vague.

23 Incomplete hypothetical. Scope.

24 MR. UTTER: Go ahead.

25 THE WITNESS: No. I -- well, I do

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1 agree that they should have -- they're --

2 they're required to know their customers.

3 They're required -- they're held to the same

4 standard as a distributor.

5 So yes, they're supposed to know

6 their customers; they're supposed to be able to

7 make a determination that the drugs that

8 they're shipping downstream are not being

9 diverted. The same obligation as the

10 distributor.

11 BY MR. O'CONNOR:

12 Q. But manufacturers aren't required to

13 police the entire supply chain, correct?

14 MS. SINGER: Objection. Asked and

15 answered.

16 MR. BENNETT: Objection. Vague.

17 Incomplete hypothetical. And scope.

18 THE WITNESS: Again, they're --

19 they're required to do exactly what

20 distributors do.

21 BY MR. O'CONNOR:

22 Q. Okay. Take a look at that same

23 exhibit you have in front of you --

24 A. Yeah.

25 Q. -- No. 6.

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1 A. Uh-huh.

2 Q. And I'd like you to turn to pages 18

3 and 19.

4 Bottom of Page 18 you say: "People

5 always say, 'Well, you can't expect us to

6 police the -- the supply chain.' And I say, 'I

7 don't expect you to police the supply chain.

8 But I do expect you to police your own

9 customers!'"

10 Do you see that?

11 A. Yes.

12 Q. So you expect manufacturers to

13 police their own customers --

14 A. Absolutely.

15 Q. -- correct?

16 But you do not expect them to police

17 the entire supply chain.

18 MR. BENNETT: Object.

19 MS. SINGER: Objection.

20 Mischaracterizes the document. Takes

21 statements out of context. And as you know,

22 the rule requires that you provide whole of the

23 context in the relevant document, like here,

24 Page 18, in the first full paragraph.

25 MS. MAINIGI: Special Master Cohen,

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1 could we ask that there not be speaking and
2 coaching objections of the type that were made.

3 MS. SINGER: Rule 106.

4 SPECIAL MASTER COHEN: You know, an
5 objection needs to be succinct. And that was
6 more than necessary, please.

7 BY MR. O'CONNOR:

8 Q. Do you need the question again?

9 A. Yes.

10 Q. Okay. But you do not expect
11 manufacturers to police the entire supply
12 chain, correct?

13 MS. SINGER: Objection. Asked and
14 answered. Mischaracterizes the document.

15 MR. BENNETT: Objection. Vague.

16 Objection. Incomplete hypothetical.

17 Objection. Scope.

18 THE WITNESS: Could you clarify what
19 the entire supply chain is.

20 BY MR. O'CONNOR:

21 Q. The entire supply chain would refer
22 to, in addition to the manufacturers, the
23 distributors, the pharmacies, the doctors and
24 the patient.

25 A. They absolutely should be looking at

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1 the -- the distributors and the pharmacies. I
2 think that that's important.

3 Obviously they can't look at the
4 patients unless they actually, you know --
5 they -- they could look at the
6 pharmacies, and they look -- they look at the
7 distributors. And I think that's a
8 requirement.

9 It -- the Controlled Substances Act,
10 the infrastructure is a system of checks and
11 balances. And for it to work, everybody's got
12 to do what's required of them in their specific
13 role within the supply chain.

14 Q. In terms of what's required of
15 manufacturers, did DEA ever issue any sort of
16 official guidance informing manufacturers that
17 they were to monitor pharmacies?

18 A. The guidance was that --

19 MR. BENNETT: Wait a second.

20 Objection. Vague.

21 You can answer.

22 THE WITNESS: The guidance was that
23 they have to comply with the obligations, both
24 the manufacturer and the distributors. It's in
25 the Code of Federal Regulations. It's

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1 coincident.

2 Activity to distribute by a
3 manufacturer. Therefore, they are required to
4 do exactly the same thing that a distributor
5 did. That's where the guidance is in the Code
6 of Federal Regulations.

7 BY MR. O'CONNOR:

8 Q. Beyond the text of the regulation,
9 though, DEA never sent a letter to registrants
10 informing manufacturers that they needed to
11 monitor the pharmacies distributors were
12 selling to, correct?

13 MR. BENNETT: Objection. Vague.

14 You can answer.

15 THE WITNESS: If I'm not mistaken,
16 every manufacturer got the 2006 and 2007
17 letters that laid out what the obligations were
18 under the Controlled Substances Act in the Code
19 of Federal Regulations.

20 BY MR. O'CONNOR:

21 Q. But neither of those letters said
22 expressly that manufacturers had to monitor
23 pharmacies that distributors were selling to,
24 did they?

25 A. The --

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1 MS. SINGER: Objection. Lack of
2 foundation.

3 THE WITNESS: The letters were
4 written and sent to the manufacturers because
5 they also had a distribution component which
6 required them to meet the same standards --
7 legal standards under the Controlled Substances
8 Act and the Code of Federal Regulations in
9 1301.74(b).

10 BY MR. O'CONNOR:

11 Q. DEA never published a formal
12 guidance document informing manufacturers that
13 they were to monitor the pharmacies
14 distributors were selling to, did it?

15 MS. SINGER: Objection. Vague.

16 THE WITNESS: That would be --
17 formal guidance, no. But they're held to the
18 same standards. They still have to maintain
19 effective controls against diversion, which is
20 a statutory obligation as well as a regulatory
21 obligation. And to do that they have to know
22 what is happening with their drugs downstream.

23 BY MR. O'CONNOR:

24 Q. As you sit here today, could you
25 point me to any guidance in writing provided to

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1 any manufacturer that articulates the duty you
2 just said existed?

3 MR. BENNETT: Objection. Scope.

4 You're not authorized to disclose
5 any individual DEA investigations or activities
6 that are nonpublic. To the extent that you can
7 answer that question without disclosing
8 individual DEA investigations or activities
9 with a particular manufacturer that is
10 nonpublic, then you may answer the question.

11 MS. SINGER: Objection.

12 Mischaracterizes the witness's testimony.

13 MR. UTTER: Go ahead.

14 THE WITNESS: I stand by what I
15 said. The obligations are in the Code of
16 Federal Regulations and also in 21 USC. And
17 those have been in place since the early '70s.

18 BY MR. O'CONNOR:

19 Q. Mr. Rannazzisi, are you familiar
20 with the term "charge-back"?

21 A. Yes.

22 Q. What do you understand a charge-back
23 to be?

24 MR. BENNETT: Objection. Scope.

25 THE WITNESS: "Charge-back" means --

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1 charge-back is -- is referred to by different
2 monikers throughout the supply chain.

3 But from what I understand, it is --
4 is a manufacturer collects data on downstream
5 sales through some sort of compensation
6 agreement with the distributor or the
7 pharmacies.

8 BY MR. O'CONNOR:

9 Q. When did you first hear the term
10 "charge-back"?

11 A. A while ago. Probably sometime
12 before 2010.

13 Q. Okay. Do you remember how you first
14 came to hear that term?

15 MR. BENNETT: Objection. Scope.

16 You're not authorized to disclose
17 investigative information that you acquired
18 that is nonpublic. To the extent that you have
19 disclosed publicly when you heard of that or
20 you have public information, you may use that,
21 but not any confidential investigative
22 information.

23 THE WITNESS: I seem to remember the
24 first time I heard about charge-back
25 information was at a conference. And it was at

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1 a -- it was at a conference involving multiple
2 disciplines within industry and the regulated
3 -- the regulators.

4 And it came up in a conversation,
5 but I -- I don't recall exactly when.

6 BY MR. O'CONNOR:

7 Q. In your understanding, do
8 charge-backs have any role in the suspicious
9 order monitoring process?

10 MR. UTTER: Go ahead. You can
11 answer.

12 THE WITNESS: They may, yes.

13 BY MR. O'CONNOR:

14 Q. Did DEA ever issue any guidance to
15 manufacturers informing them that charge-backs
16 were to play a role in suspicious order
17 monitoring?

18 A. D --

19 MR. BENNETT: Objection. Vague.
20 And vague as to time.

21 THE WITNESS: DEA doesn't -- DEA
22 does not tell a registrant or either the man --
23 or a registrant involved in distribution
activities what's a suspicious order, besides
the -- the definition in 1301.74(b).

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1 It's up to the -- the distributor or
2 the manufacturer, distributor to make a
3 decision what information they will use to
4 determine a suspicious orders.

5 BY MR. O'CONNOR:

6 Q. So DEA never issued any guidance to
7 manufacturers informing them that charge-backs
8 were to play a role in suspicious order
9 monitoring, correct?

10 MS. SINGER: Objection. Asked and
11 answered.

12 BY MR. O'CONNOR:

13 Q. I would just like a yes-or-no
14 answer.

15 MS. SINGER: Objection.

16 MR. BENNETT: Objection.

17 The witness can answer the question.

18 THE WITNESS: Besides the
19 regulations and the C.F.R. -- in the CSA, no, I
20 don't know if they ever issued a regulation --
21 any kind of document regarding chargebacks.

22 BY MR. O'CONNOR:

23 Q. Okay. When you were head of the
24 Office of Diversion Control, there was a unit
within that office that analyzed ARCOS data,

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1 correct?

2 A. Yes.

3 Q. Did that group use ARCOS data to
4 look for leads for investigations?

5 A. They can, yes.

6 Q. Did they, in fact, do that?

7 A. Yes.

8 Q. And would you agree that analyzing
9 the ARCOS data was helpful to the agency in
10 generating leads for investigations?

11 MR. BENNETT: Objection. Vague.
12 And vague as to time.

13 THE WITNESS: The analysis of ARCOS
14 information can help, yes, leads for
15 investigations.

16 BY MR. O'CONNOR:

17 Q. Did the DEA use ARCOS for
18 investigative leads in a timely manner in your
19 view?

20 MS. SINGER: Objection. Vague.

21 MR. BENNETT: Objection. Vague.
22 And objection. Scope. Regarding opinions.

23 THE WITNESS: I don't understand
24 what you mean by "in a timely manner."

25 ARCOS is generally three to six

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1 months behind because of the reporting
2 requirements under the C.F.R., so if you are
3 asking me if ARCOS is timely reported, the
4 answer is they are always behind, you know.

5 So when the investigators look at
6 ARCOS data, you are always four to six months
7 behind and what was actually shipped
8 downstream.

9 BY MR. O'CONNOR:

10 Q. Does the fact that the information
11 is received on a slight delay affect its
12 usefulness at identifying diversion?

13 A. Well --

14 MS. SINGER: Objection. Vague.

15 THE WITNESS: Well, it's not a
16 substitute for suspicious orders if that what
17 you are going. A suspicious order under
18 1301.74(b) is reported when discovered. ARCOS
19 is four to six months behind so, therefore, we
20 are always behind. If we are going solely by
21 ARCOS, that is why there is a suspicious order
22 monitoring requirement in the C.F.R.

23 MR. BENNETT: Counsel, we didn't
24 take a break when we switched. When you get to
25 a good point, could we take a break.

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1 MR. O'CONNOR: Sure. We can take a
2 break now.

3 THE VIDEOGRAPHER: We are going off
4 the record. This is end of Media Unit No. 2.
5 The time is 10:45.

6 (A short recess was taken.)

7 THE VIDEOGRAPHER: We are going back
8 on the record. This is the start of Media Unit
9 No. 3. The time is 11:00.

10 You may proceed, Counsel.

11 MR. SHKOLNIK: Special Master Cohen,
12 on behalf of Cuyahoga County, CT1 plaintiff,
13 there was an objection lodged before and there
14 was a series of questions by counsel where he
15 was quoting a specific one sentence from a
16 transcript of an episode of a speech or a
17 podcast that the witness gave and the objection
18 made was under Rule 106 that is entitled:
19 "Remainder of or related to writings or
20 recorded statements. If a party introduced all
21 or part of a writing or a recorded statement,
22 the adverse party may require the introduction
23 at that time of any other part or any other
24 writing or recorded statement that in fairness
25 ought to be considered at the same time."

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1 The rule is clear that you don't
2 wait until cross to fill in the next segment.
3 This is not a deposition question answer,
4 question answer, but a running colloquy in an
5 interview, and from the plaintiffs' standpoint,
6 both colloquies, counsel took two sentences out
7 of context, where the next sentence if it was
8 read would truly put some question to the point
9 counsel was making.

10 We ask in the future or even now
11 that counsel be directed to go back and present
12 the question and followup statements to the
13 witnesses.

14 MR. O'CONNOR: First of all --

15 SPECIAL MASTER COHEN: Go ahead.

16 MR. O'CONNOR: First of all, we
17 think the -- that the questions as posed to the
18 witness were clear and didn't require any
19 further context.

20 Second, we did introduce the entire
21 exhibit as an exhibit, the entire document
22 there.

23 Third, if and when this ever gets to
24 be played at trial, we can certainly provide
25 the finder of fact with the entire document.

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1 SPECIAL MASTER COHEN: So just an
 2 observation. First of all, counsel is free to
 3 make a 106 objection. I just think that it can
 4 be made in five words or less. We all know
 5 what the shorthand is, and so it doesn't need
 6 to be a long speaking objection.

7 Second of all, this is a discovery
 8 deposition and so what happens at trial which
 9 is really more -- I'm not saying that Rule 106
 10 isn't directed at depositions, but it's more
 11 critical at trial and so I just make that
 12 observation.

13 And finally, I agree that if counsel
 14 wants to make a Rule 106 objection and ask that
 15 additional context be given to the witness,
 16 that objection can be made and we can deal with
 17 it at that time.

18 All right. Let's resume.

19 MS. SINGER: Special Master Cohen,
 20 can I just ask a clarifying question about
 21 speaking objections, when there is a 106
 22 objection, do you want us to point you to the
 23 testimony or --

24 SPECIAL MASTER COHEN: No. You just
 25 need to say we object under Rule 106,

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1 additional context is necessary, and then we
 2 can deal with it at that time.

3 MS. SINGER: Okay.

4 BY MR. O'CONNOR:

5 Q. Mr. Rannazzisi, do you know an
 6 individual named Lenny Bernstein?

7 A. Yes.

8 Q. He's a reporter at the Washington
 9 Post, correct?

10 A. Yes.

11 Q. And you have spoken with him in the
 12 past?

13 A. Yes.

14 Q. On multiple occasions, correct?

15 A. Yes.

16 Q. Are you familiar with Scott Higham?

17 A. Yes.

18 Q. He is also a reporter at the
 19 Washington Post, isn't he?

20 A. Yes.

21 Q. And you have met with him on
 22 multiple occasions?

23 A. Yes.

24 Q. And at any time in your meetings
 25 with Mr. Bernstein and Mr. Higham, did you

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1 provide them with any documents?

2 A. No.

3 Q. Are you aware of anyone that
 4 provided documents belonging to the DEA to Mr.
 5 Higham or Mr. Bernstein?

6 MS. SINGER: Objection. Scope.

7 THE WITNESS: I'm not aware of any
 8 documents provided to them other than what the
 9 department provided to them.

10 BY MR. O'CONNOR:

11 Q. Are you aware that they received
 12 confidential documents that were not provided
 13 by the department?

14 MS. SINGER: Objection. Foundation.

15 MR. UTTER: Same objection.

16 Go ahead.

17 THE WITNESS: No.

18 BY MR. O'CONNOR:

19 Q. When did you first meet with Mr.
 20 Bernstein?

21 A. It was -- it was probably in late --
 22 probably '16, sometime mid-'16, 2016.

23 Q. Did you meet with Mr. Higham around
 24 that same time?

25 A. I met Mr. Higham later.

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1 Q. Do you remember roughly when that
 2 was?

3 A. It was probably a month or two
 4 later.

5 Q. Did you reach out to them?

6 A. No.

7 Q. They came to you?

8 A. Yes.

9 Q. And at any time in your discussions
 10 with Mr. Bernstein and Mr. Higham, did you
 11 provide them with any information that you
 12 learned in the course of your duties at DEA?

13 A. Actually, when we talked, I told
 14 them specifically that the information can be
 15 obtained either through PACER or FOIA, but I
 16 didn't.

17 Q. So you did not provide them with any
 18 confidential --

19 A. No.

20 Q. -- DEA information. Okay.

21 MR. BENNETT: Let him finish the
 22 question first, please.

23 THE WITNESS: Okay.

24 BY MR. O'CONNOR:

25 Q. When you first consulted with Mr.

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1 Bernstein, had you already been retained by
 2 plaintiffs' lawyers in connection with the
 3 opioid investigation?

4 MS. SINGER: Objection. Vague.

5 THE WITNESS: I don't recall.

6 BY MR. O'CONNOR:

7 Q. When you first spoke with Mr.
 8 Higham, had you been retained by plaintiffs'
 9 lawyers in connection with the opioid
 10 litigation?

11 A. I think it was right about that
 12 time. I had done -- it was right about that
 13 time, because I think they saw that I had done
 14 other -- my name was mentioned in other
 15 newspaper articles and so that's when -- when
 16 Lenny approached me, so I guess it was right
 17 about that time, yes.

18 Q. Are you still in contact with Mr.
 19 Bernstein or Mr. Higham today?

20 A. I haven't talked to Mr. Bernstein in
 21 a long time and Mr. Higham, I talked to him,
 22 you know, probably once every couple of weeks.

23 Q. Other than Bernstein or Higham, have
 24 you disclosed to any other reporters or
 25 journalists any documents from the DEA?

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1 MR. BENNETT: Objection. Form of
 2 the question. Objection to the
 3 mischaracterization of the testimony that he
 4 did provide documents to Mr. Bernstein or Mr.
 5 Higham.

6 MS. SINGER: Objection. Scope.

7 THE WITNESS: What was the question
 8 again. I'm sorry.

9 BY MR. O'CONNOR:

10 Q. Have you ever provided any reporters
 11 or journalists DEA documents?

12 A. No. What I generally do is if a
 13 reporter asks questions, I basically tell them
 14 it's available through FOIA or if it's
 15 specific, I tell them to look on PACER. Almost
 16 all of our cases are listed on PACER.

17 MR. O'CONNOR: We will take a short
 18 break and switch questioners. Go off the
 19 record.

20 THE VIDEOGRAPHER: We are going off
 21 the record. The time is 11:08.

22 (A short recess was taken.)

23 THE VIDEOGRAPHER: We are back on
 24 the record. The time is 11:11.

25 You may proceed, Counsel.

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1 EXAMINATION BY COUNSEL FOR WALMART

2 BY MR. STEPHENS:

3 Q. Mr. Rannazzisi, good morning. My
 4 name is Neal Stephens. I'm with the Jones Day
 5 law firm and I represent Walmart.

6 How are you this morning?

7 A. Fine, thank you.

8 Q. I will have some questions for you
 9 that relate to the retail chain pharmacies and
 10 those will -- in this litigation will include
 11 Walmart, CVS, Rite Aid, Walgreens and HBC,
 12 Giant Eagle. Sometimes I will use them all or
 13 sometimes I may just use brand retail chain
 14 pharmacies.

15 A. Okay.

16 Q. All right. So I'd like to start by
 17 asking you a few questions about your general
 18 employment history and your general duties in
 19 your various positions at DEA, okay?

20 A. Yes, sir.

21 Q. All right. As head of the diversion
 22 control unit, your duties would have included
 23 the leadership responsibility for the entire
 24 group, correct?

25 A. For the entire division.

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1 Q. Of the diversion control group,
 2 right?

3 A. Yes.

4 Q. Okay. So you would help set the
 5 tone and the culture for how the diversion
 6 control group was going to handle every aspect
 7 of enforcing the Controlled Substances Act?

8 MR. BENNETT: Objection. Vague.

9 THE WITNESS: When you say, "set the
 10 tone," I'm just curious, what does that mean.

11 BY MR. STEPHENS:

12 Q. So how large is this organization
 13 you are running?

14 A. Well, in headquarters, it was about
 15 300 -- between contractors and investigators,
 16 employees, about 340, and then in the field,
 17 there was probably 600 -- between 5 and 600
 18 diversion investigators and support staff and
 19 probably about 1200 special agents and task
 20 force officers.

21 Q. So it's a big organization, correct?

22 A. Uh-huh.

23 Q. And my point was, as the leader,
 24 kind of like a CEO in a company, part of your
 25 responsibility and your job duties was to set

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1 the tone for how the organization was going to
 2 go about doing its business; is that fair?
 3
 4 MS. SINGER: Same objection as to
 5 vagueness.

6 MR. BENNETT: Join that Objection.

7 THE WITNESS: If you are saying what
 8 the priorities are, how -- what the priorities
 9 are, our priorities are based on what the field
 10 management feels the priorities are and then
 11 just following what the violations or -- of the
 12 Controlled Substances Act in the code of
 13 federal regulations.

14 BY MR. STEPHENS:

15 Q. As the deputy assistant
 16 administrator for the diversion control group,
 17 would you agree that you supervised DEA's
 18 efforts to identify where diversion was
 19 occurring in the United States?

20 A. I supervised, yes, diversion cases
 21 in general.

22 Q. As part of your duties, do you also
 23 agree that you supervised DEA's efforts to
 24 identify precisely who was diverting controlled
 25 substances?

MR. BENNETT: Objection. Vague.

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1 THE WITNESS: We basically
 2 investigated diversion across the board.

3 BY MR. STEPHENS:

4 Q. Okay. And part of the role as the
 5 leader was to try and identify who was
 6 diverting; is that fair?

7 A. Investigators identified who was
 8 diverting.

9 Q. And they reported up to you as the
 10 leader?

11 MS. SINGER: Objection.

12 THE WITNESS: Not every case, no.

13 BY MR. STEPHENS:

14 Q. Some of the investigators who were
 15 trying to identify where diversion was
 16 occurring reported up to you, right?

17 A. Investigations would be reported up
 18 to me on an as-needed basis.

19 Q. Did you help set DEA's practices and
 20 policies regarding how DEA would investigate
 21 and prosecute diversion matters, including who
 22 to target for potential prosecution of
 23 criminal, civil or administrative enforcement
 24 actions?

25 MS. SINGER: Objection. Compound

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1 question and vague.

2 MR. BENNETT: I will join those
 3 objections.

4 MR. UTTER: Same objection.

5 THE WITNESS: Could you repeat the
 6 question one more time, please.

7 BY MR. STEPHENS:

8 Q. I am just trying to understand, as
 9 the leader of the diversion control group, did
 10 you help set policies and protocols regarding
 11 how DEA was going to conduct its investigation
 12 of diversion matters?

13 MS. SINGER: Same objection.

14 MR. BENNETT: Same objection.

15 THE WITNESS: Policies and protocols
 16 are set by the agency. I don't -- I don't
 17 unilaterally create policies and protocols.
 18 It's done by the agency with my input.

19 BY MR. STEPHENS:

20 Q. But that would be part of your job
 21 duties to provide input to that, correct, sir?

22 A. Yes.

23 Q. All right. And part of your job
 24 duties would also involve supervising and
 25 proving certain charging decisions in

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1 administrative, civil or criminal diversion
 2 matters?

3 MS. SINGER: Objection. Vague and
 4 compound question.

5 MR. BENNETT: Objection. Scope.
 6 You are not authorized to disclose
 7 any information that would reveal the internal
 8 deliberative process of the United States
 9 Department of Justice and you may not disclose
 10 any matters of prosecutorial discretion.

11 To the extent that you can answer
 12 the question without disclosing those areas of
 13 information, you may answer.

14 MR. UTTER: Go ahead.

15 THE WITNESS: Like all
 16 investigations, there is levels of review that
 17 it must go through, so U.S. attorneys are
 18 generally involved in these decisions as is
 19 counsel's office and also other individuals
 20 within the Drug Enforcement Administration
 21 leadership.

22 BY MR. STEPHENS:

23 Q. Mr. Rannazzisi, I understand that
 24 others might be involved. But my point is,
 25 this is part of the general duties that you had

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1 while you were deputy assistant administrator
 2 for diversion control to supervise and approve
 3 at times certain charging decisions in
 4 administrative, civil or criminal matters?

5 MS. SINGER: Objection. Vague.

6 Still a compound question.

7 MR. BENNETT: I join those
 8 objections.

9 THE WITNESS: In administrative
 10 cases, I would approve certain things. In
 11 civil and criminal cases, that falls on the
 12 shoulders of the U.S. attorney.

13 BY MR. STEPHENS:

14 Q. Okay. Would you help establish the
 15 manner in which DEA was going to interact with
 16 registrants including what information DEA
 17 might provide to registrants to reduce
 18 diversion?

19 MS. SINGER: Objection. Vague.

20 BY MR. STEPHENS:

21 Q. As part of your general job duties?

22 A. Any dealings with registrants, any
 23 information would -- we would consult with
 24 counsel's office and the administrator before
 25 we do that.

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1 Q. But it was part of your general
 2 duties to be involved in that process; is that
 3 fair, sir?

4 A. I was involved but --

5 MS. SINGER: Objection.

6 Mischaracterizes the witness's testimony.

7 THE WITNESS: I was involved but I
 8 was not the ultimate decisionmaker on that.

9 BY MR. STEPHENS:

10 Q. Okay. But your involvement was part
 11 of your general duties; is that fair?

12 A. Yes.

13 Q. Thank you. All right. A part of
 14 your general duties also included speaking on
 15 DEA's behalf to Congress or the media or other
 16 law enforcement agencies or industry and
 17 community groups about diversion issues while
 18 you were the deputy assistant administrator for
 19 diversion control?

20 MS. SINGER: Same objection as to
 21 compounded question.

22 MR. BENNETT: Compound and vague.

23 MR. UTTER: Same objection.

24 Go ahead.

25 THE WITNESS: One of my requirements

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1 was that I would -- I would be assigned to do
 2 testimony before Congress or speak to --
 3 regulated -- the regulated community,
 4 regulatory agencies, law enforcement, community
 5 groups, parent's groups and things like that,
 6 so yes.

7 BY MR. STEPHENS:

8 Q. And as part of your duties when you
 9 would provide information to Congress, some of
 10 that information that you were providing was
 11 information on where DEA's diversion group saw
 12 diversion occurring in the United States.

13 MS. SINGER: Objection. Compound
 14 question.

15 THE WITNESS: I testified over 32
 16 times, over a long stretch, a long period of
 17 time, so that's changed -- that all changed as,
 18 you know, as the drug issues changed, so I
 19 provided information, whatever information at
 20 that point in time the Drug Enforcement
 21 Administration and the Department of Justice
 22 thought was appropriate for that particular
 23 hearing.

24 BY MR. STEPHENS:

25 Q. Okay. And the information that you

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1 provided to Congress, that was part of your
 2 general duties on behalf of DEA as the leader
 3 of diversion control to provide that
 4 information through to Congress?

5 MS. SINGER: Objection. Compound
 6 question.

7 MR. UTTER: Go ahead.

8 THE WITNESS: Yes, it was the -- it
 9 was the -- my job responsibility to put forth
 10 the Department of Justice and the DEA's
 11 position on matters related to that particular
 12 hearing for Congress.

13 BY MR. STEPHENS:

14 Q. Okay. As part of your general
 15 duties as the leader of the diversion control
 16 group, as deputy assistant administrator, did
 17 you also participate in making sure that DEA
 18 did not do anything to contribute to the
 19 diversion of controlled substances?

20 MS. SINGER: Objection. Vague.
 21 Compounded question.

22 MR. BENNETT: Objection. Vague.

23 THE WITNESS: DEA follows a
 24 requirements under 21 U.S.C. and the code of
 25 federal regulations. We were not in the

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1 business of creating diversion. We are in the
 2 business of making sure the registered -- the
 3 regulated community is complying with the law
 4 and the regulations.

5 BY MR. STEPHENS:

6 Q. Part of your duties included
 7 interacting with field division leadership at
 8 the various field offices for DEA around the
 9 country?

10 A. Yes.

11 Q. And also interacting with United
 12 States attorney's offices on matters; is that
 13 fair?

14 A. Yes.

15 Q. You also would interact with other
 16 federal law enforcement agencies and state and
 17 local law enforcement agencies regarding
 18 diversion issues, correct?

19 A. That's --

20 MS. SINGER: Objection. Vague.

21 THE WITNESS: That's correct.

22 BY MR. STEPHENS:

23 Q. And as the leader of your group,
 24 would you also at a high level oversee the
 25 hiring, training and continuing education of

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1 the diversion control group's diversion
 2 investigators?

3 A. No.

4 MR. BENNETT: Objection. Vague.

5 THE WITNESS: I -- I oversee the
 6 hiring with the administrator's office.
 7 Training is done by a separate training office.

8 BY MR. STEPHENS:

9 Q. Okay. Would your group provide
 10 information to the training group as to how to
 11 train diversion investigators?

12 A. I'm sure --

13 MR. BENNETT: Objection. Scope.

14 You can answer that question "yes"
 15 or "no" only.

16 THE WITNESS: Yes.

17 BY MR. STEPHENS:

18 Q. So part of your general duties would
 19 have been ensuring that the training group who
 20 was training DEA's diversion investigators had
 21 what you thought was the appropriate
 22 information to train up the diversion
 23 investigators?

24 MS. SINGER: Objection.

25 Mischaracterizes the witness's testimony. And

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1 compound.

2 THE WITNESS: And I'm just trying to
 3 think.

4 Could you repeat it one more time.

5 BY MR. STEPHENS:

6 Q. Yes, sir.

7 Part of your general duties would
 8 have been ensuring that the training group
 9 responsible for training DEA's diversion
 10 investigators had the information that your
 11 group, the diversion control group, thought was
 12 appropriate for the diversion investigation --
 13 diversion investigators to learn during the
 14 training.

15 MS. SINGER: Same objections.

16 THE WITNESS: I believe that
 17 training got information, yes, from my people.
 18 But they also reached out to field entities to
 19 make sure that what they're -- what they're
 20 training -- or their training program is the
 21 most up-to-date information.

22 BY MR. STEPHENS:

23 Q. Okay. Fair enough, Mr. Rannazzisi.
 24 And I'm not suggesting that your group was the
 25 only one that provided information through the

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1 training of diversion investigators.

2 I'm only trying to make sure that I
 3 understand that that was part of the -- the job
 4 duties that you supervised for diversion
 5 control, that they participated at some level
 6 in that process.

7 That's fair, right?

8 MR. BENNETT: Objection. Vague.

9 BY MR. STEPHENS:

10 Q. Yes? Is that fair?

11 A. Well, who participated?

12 Q. That the diversion control group
 13 participated at some level in providing
 14 information through the training.

15 A. Yeah. Certainly. Certainly people
 16 in the diversion control group did, yes.

17 Q. And would the diversion
 18 investigators be trained on how to conduct due
 19 diligence on applications for registrations
 20 from doctors and pharmacies?

21 MS. SINGER: Objection. Scope.

22 MR. BENNETT: You can answer.

23 THE WITNESS: I'm not sure what --
 24 I -- I know there's training on applicants. I
 25 know there's both formal training and then

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1 training in the field. I just -- I'm not sure
2 exactly what that training entails.

3 BY MR. STEPHENS:

4 Q. Okay. Mr. Rannazzisi, for your
5 benefit, I'm not asking you to know like the 40
6 bullet points that are covered --

7 A. Right.

8 Q. -- in the slide deck.

9 All I'm trying to understand is
10 whether diversion control group would have been
11 involved in providing some information about
12 training diversion investigators on how to
13 conduct due diligence on applications for
14 registration by doctors and pharmacies.

15 MS. SINGER: Objection. Asked and
16 answered.

17 THE WITNESS: I'm pretty sure the
18 Office of Diversion Control did provide input
19 on applicants. We have a whole applicant
20 section, and I know they've trained before.

21 BY MR. STEPHENS:

22 Q. Okay. And did part of your job
23 duties also -- again, talking about the
24 training of diversion investigators, another
25 topic that would have been included that

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1 diversion control would have provided some
2 guidance on was how diversion investigators
3 could use ARCOMS data and suspicious order
4 report information in diversion investigations.

5 MS. SINGER: Objection. Foundation.
6 Compound question.

7 MR. BENNETT: Objection. Scope.

8 To the extent that your answer would
9 reveal investigative or intelligence gathering
10 and the summation techniques whose
11 effectiveness would thereby be impaired, you're
12 not authorized to answer. To the extent that
13 you can answer without disclosing such
14 information, you may.

15 MR. UTTER: Same objection.

16 Go ahead.

17 THE WITNESS: Investigators were
18 trained in ARCOMS.

19 BY MR. STEPHENS:

20 Q. Okay. And without getting into any
21 details, again, of every bit of information
22 that appear in a slide deck, some of that
23 information would have come through the
24 training from the diversion control group, your
25 group.

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1 A. You mean the Office of Diversion
2 Control.

3 And I'm -- I'm not sure.

4 Q. Your office -- the office -- I'm
5 sorry. I'll --

6 A. It's the -- it's the Office of
7 Diversion Control.

8 Q. Okay. I apologize to you. I'll get
9 that right. Office of Diversion Control. Got
10 it.

11 The Office of Diversion Control
12 would have -- as far as the training, would
13 have provided some information for diversion
14 investigators as to suspicious order report
15 information; is that fair?

16 A. Again, that would come from training
17 with input from the field and from the Office
18 of Diversion Control.

19 Q. Okay. So let me ask you some kind
20 of basic questions about DEA's org chart so I
21 understand how the Office of Diversion Control
22 fits in.

23 Each DEA field division is run by a
24 special agent in charge.

25 A. Yes.

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1 Q. And there are approximately 23 field
2 divisions in the United States?

3 A. It's changed over the last three
4 years. I'm not sure how many --

5 Q. Okay.

6 A. -- there is.

7 Q. During your time, from 2005 to 2015,
8 approximately how many DEA field divisions were
9 there?

10 A. I believe there was 20 or 21.

11 Q. Okay. And a DEA field division can
12 cover several states where there are several
13 major cities in a region, right?

14 A. Yes.

15 Q. So, for example, my understanding is
16 that you spent some time in the Detroit field
17 division; is that right?

18 A. Yes.

19 Q. The -- the main field division
20 headquarters is in the City of Detroit for the
21 Detroit region, right?

22 A. The Detroit division office is in
23 Detroit, yes.

24 Q. Okay. There are satellite offices
25 in other major cities in the region though,

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1 correct?
 2 A. Yes.
 3 Q. For example, there's a -- a district
 4 office in Cleveland, correct?
 5 MR. BENNETT: Objection. Vague as
 6 the time.
 7 BY MR. STEPHENS:
 8 Q. During your time in 2005 and 2015,
 9 there was a district office in Cleveland; is
 10 that fair?
 11 A. No. It was a resident office in
 12 Cleveland.
 13 Q. Okay. So --
 14 A. The district office sat in Columbus.
 15 Q. Okay. So during your time, the
 16 district office would have had a resident agent
 17 in charge as the number one agent in the -- in
 18 that office in Cleveland, right?
 19 A. No.
 20 MS. SINGER: Objection. Vague.
 21 BY MR. STEPHENS:
 22 Q. What was the title of the highest
 23 ranking DEA officer in Cleveland during your
 24 time as deputy administrator -- assistant
 25 administrator?

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1 A. He was a resident agent in charge
 2 for a resident office. Cleveland was a
 3 resident office.
 4 Q. Okay. And in DEA terms that's a
 5 RAC, right, a resident agent --
 6 A. Right.
 7 Q. -- in charge?
 8 A. Yes.
 9 Q. Now, DEA structures -- typically
 10 structures its enforcement group in a separate
 11 organization than the diversion group, right?
 12 MR. BENNETT: Objection. Vague.
 13 THE WITNESS: Not necessarily.
 14 Because there are tactical diversion squads
 15 that have both special agents, diversion
 16 investigators, and task force officers in the
 17 same group.
 18 BY MR. STEPHENS:
 19 Q. Okay. Enforcement agents are
 20 special agents, correct?
 21 A. Yes.
 22 Q. Enforcement agents carry guns and
 23 badges, and they investigate drug
 24 trafficking -- typically investigate drug
 25 traffic organizations who traffic illegal drugs

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1 like cocaine.
 2 MS. SINGER: Objection. Compound
 3 question.
 4 MR. BENNETT: Objection. Vague.
 5 And scope.
 6 MR. UTTER: Go ahead.
 7 THE WITNESS: Enforcement agents,
 8 special agents, carry guns. They have arrest
 9 authority, arrest powers. But they investigate
 10 all -- all criminal -- all criminal, civil
 11 violations of the Controlled Substances Act.
 12 They are not limited to what they investigate.
 13 BY MR. STEPHENS:
 14 Q. Okay. The -- in the field there are
 15 many diversion investigator squads that are
 16 comprised of diversion investigators, correct?
 17 A. Yes.
 18 MS. SINGER: Objection.
 19 MR. BENNETT: Objection.
 20 MS. SINGER: Compound.
 21 MR. BENNETT: And objection. Vague.
 22 BY MR. STEPHENS:
 23 Q. And -- and, Mr. Rannazzisi, in the
 24 field offices -- let's take the Miami field
 25 office, for example.

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1 Historically the Miami field office,
 2 during your tenure, would have had enforcement
 3 groups that are filled with enforcement agents
 4 only, correct?
 5 MS. SINGER: Objection. Compound
 6 question. And vague.
 7 MR. BENNETT: Objection. Vague.
 8 Also objection. Scope.
 9 You can answer.
 10 THE WITNESS: Yes. There -- there
 11 are diversion groups that are strictly
 12 diversion investigators with nothing -- they
 13 don't have any other type of investigative
 14 personnel.
 15 BY MR. STEPHENS:
 16 Q. And the flip side of that is there
 17 are enforcement groups that are filled only
 18 with agents, right?
 19 A. Yes.
 20 Q. And the other group that you
 21 mentioned is a TDS squad, which might be a bit
 22 of a hybrid where it's got a little bit of both
 23 some enforcement agents and some diversion
 24 agents and maybe some state and local officers,
 25 too, correct?

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1 MS. SINGER: Objection. Compound
 2 question.
 3 MR. BENNETT: Objection. Scope.
 4 THE WITNESS: The tactical -- the
 5 tactical diversion squad is generally made up
 6 of diversion investigators, special agents and
 7 task force officers.

8 BY MR. STEPHENS:

9 Q. Now, during your ten years running
 10 the -- as deputy assistant administrator and
 11 running the Office of Diversion you would have
 12 interacted with a lot of special agents in
 13 charge that were running field divisions; is
 14 that fair?

15 MR. BENNETT: Objection. Vague.

16 THE WITNESS: I've met and talked to
 17 most, if not all, the special agents in charge
 18 during my tenure, yes.

19 BY MR. STEPHENS:

20 Q. Okay. And that -- would that be
 21 more than a hundred?

22 A. There's generally 21, when I was
 23 there, special agents in charge. And they
 24 rotated in and out, retired. I don't know.
 25 Probably -- I don't know if it was a hundred,

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1 but a number, probably half that.

2 Q. About 50?

3 A. Yeah.

4 Q. How many of those 50 special agents
 5 in charge came up through the ranks as
 6 diversion investigators at DEA?

7 MS. SINGER: Objection. Scope.

8 MR. BENNETT: Objection. Scope.

9 You can answer if you know.

10 THE WITNESS: I -- I only know of --
 11 of one. I'm sure there are others, but I only
 12 know of one in particular.

13 BY MR. STEPHENS:

14 Q. Would you agree that, of the 50 or
 15 so special agents in charge that you had
 16 experience working with, they had more
 17 experience handling DEA enforcement
 18 investigations as opposed to DEA diversion
 19 investigations?

20 MS. SINGER: Objection. Foundation.
 21 And compound question.

22 MR. BENNETT: Objection. Vague.
 23 And scope.

24 THE WITNESS: I -- I -- I can't
 25 agree to that. Because I don't know each

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1 individual's -- each individual special agent
 2 in charge's background or what kind of cases he
 3 worked --

4 MR. STEPHENS: Okay.

5 THE WITNESS: -- during his career.

6 BY MR. STEPHENS:

7 Q. Is -- an SAC is a level 1811
 8 position in DEA terms, correct?

9 MR. BENNETT: Objection. Scope.

10 THE WITNESS: Yes.

11 BY MR. STEPHENS:

12 Q. A -- a diversion employee can -- can
 13 reach an 1801 level, correct?

14 MR. BENNETT: Objection. Scope.

15 THE WITNESS: When you say an 1801
 16 level, are you talking -- they're -- they're
 17 1801s.

18 MR. STEPHENS: Okay.

19 THE WITNESS: Yeah. They -- they
 20 don't cross over.

21 BY MR. STEPHENS:

22 Q. Right.

23 So to be a SAC, you have to be an
 24 1811, correct?

25 A. Yes.

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1 Q. So if a diversion investigator is
 2 going to make it all the way to become a SAC,
 3 at some point that diversion investigator is
 4 going to need to become a special agent, right?

5 A. Yes.

6 Q. Okay.

7 MS. SINGER: Objection. Compound
 8 question.

9 BY MR. STEPHENS:

10 Q. So is it fair to say then that one
 11 of your challenges as deputy administrator was
 12 trying to get special agents in charge in the
 13 various field divisions to prioritize diversion
 14 matters on equal footing with enforcement
 15 investigation?

16 MS. SINGER: Objection. Compound
 17 question. Lack of foundation. And vague.

18 MR. BENNETT: Objection. Vague.
 19 Objection. Scope.

20 THE WITNESS: The field divisions
 21 are -- they operate autonomously. So the
 22 special agent in charge decides what the
 23 priorities field divisions are and their field
 24 management plans and just what their senior
 25 leadership in the division -- they make that

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1 decision.

2 So -- but I've never really had
3 problems with the field divisions not
4 addressing diversion issues, no.

5 Q. So the special agent in charge would
6 have some authority as to setting his or her
7 priorities on the investigations that they were
8 going to pursue; is that fair?

9 A. Yes.

10 Q. Let me just get the terminology
11 right.

12 A RAC runs a resident office, right?

13 A. Yes.

14 Q. Okay. Would you expect that a RAC
15 who is running a resident office in 2015 would
16 be familiar with a suspicious order report?

17 MR. BENNETT: Objection. Scope.

18 Calls for speculation.

19 THE WITNESS: I would have no idea
20 what each individual RAC knows. But I do know
21 that it -- most RACs, most special agents in
22 charge, and most, yeah, ASACs, assistant
23 special agents in charge, when they have
24 questions or they want to know the answer to a
25 diversion question, they will go to their --

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1 whoever their leadership is, be it a group
2 supervisor or a DPM, within the field division.
3 Or they'll call headquarters and talk to me.

4 BY MR. STEPHENS:

5 Q. Would you expect a RAC who runs a --
6 a resident office in 2015 to know how many
7 suspicious order reports had come into his or
8 her office that year?

9 MR. BENNETT: Objection. Scope.

10 Calls for speculation.

11 THE WITNESS: I would have no idea.

12 BY MR. STEPHENS:

13 Q. Would you expect that a RAC who is
14 running a resident office in 2015 to have
15 received training at DEA regarding what DEA
16 might be able to do with a suspicious order
17 report to investigate potential sources of
18 diversion?

19 MS. SINGER: Object --

20 MR. BENNETT: Objection.

21 MS. SINGER: Go ahead.

22 MR. BENNETT: Objection. Scope.

23 Objection. Calls for speculation.

24 MS. SINGER: And objection.

25 Compound question.

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1 THE WITNESS: The resident agent in
2 charge responsibilities are to run the office.
3 The responsibilities for suspicious order
4 monitoring are -- are that of the diversion
5 investigators and the diversion leadership
6 within that office.

7 BY MR. STEPHENS:

8 Q. So you would not necessarily expect
9 a RAC or an ASAC to understand how to use a
10 suspicious order report in a diversion
11 investigation?

12 MR. BENNETT: Objection.

13 Mischaracterizes testimony. Calls for
14 speculation.

15 THE WITNESS: I wouldn't know what
16 each individual RAC or ASAC knows or doesn't
17 know about suspicious order monitoring.

18 BY MR. STEPHENS:

19 Q. As the deputy assistant
20 administrator of the Office of Diversion
21 Control, did you take any steps to ensure that
22 SACs, ASACs and RACs, the lead supervisors in
23 the various field division offices, all
24 received training on how to use a suspicious
25 order report to investigate potential sources

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1 of diversion?

2 MS. SINGER: Objection. Compound
3 question. And scope.

4 MR. BENNETT: I'll join both of
5 those objections.

6 THE WITNESS: I seem to remember
7 joint supervisory conferences where ASACs,
8 RACs, GSS, and DPMs came in to headquarters
9 and/or did it in the field where we discussed
10 suspicious order monitoring, among other
11 things, yes.

12 BY MR. STEPHENS:

13 Q. Okay. Would you expect an -- a
14 resident agent in charge of a resident office
15 in 2015 to know what information ARCOS could
16 generate to support diversion investigations?

17 MR. BENNETT: Objection. Scope.

18 Calls for speculation.

19 THE WITNESS: Again, I can't tell
20 you exactly what the resident agents in charge
21 or the assistant special agents in charge knew
22 about ARCOS. But they did have more than
23 competent investigators and GSS and DPMs at
24 their disposal to explain that.

25 BY MR. STEPHENS:

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1 Q. With U.S. Attorney's Offices -- you
 2 would work with U.S. Attorney's Offices who are
 3 running criminal diversion investigations?

4 Did you have experience doing that
 5 as part of your general duties as deputy
 6 assistant administrator during your tenure?

7 MR. BENNETT: Objection. Scope.

8 You're not authorized to disclose
 9 any information regarding specific DEA
 10 investigations or activities or any matters of
 11 prosecutorial discretion involving specific
 12 U.S. Attorneys' Offices. However, you may
 13 answer the question generally.

14 THE WITNESS: I have talked to
 15 several U.S. Attorneys -- Assistant United
 16 States Attorneys over the years regarding
 17 investigations, yes.

18 BY MR. STEPHENS:

19 Q. Okay. And -- and I'm -- I'm not
 20 going to ask about specific investigations.

21 But did you ever have any
 22 experience, just "yes" or "no," with the
 23 situation where any prosecutors asked the
 24 Office of Diversion Control to hold off on
 25 pursuing either administrative or civil relief

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1 during the pendency of a criminal
 2 investigation?

3 MS. SINGER: Objection. Vague. And
 4 foundation.

5 MR. BENNETT: Objection. Scope.

6 You are not authorized to disclose
 7 communications that would reveal matters of
 8 prosecutorial discretion or attorney-client
 9 communications.

10 SPECIAL MASTER COHEN: It is a
 11 yes-or-no question.

12 THE WITNESS: Could you answer the
 13 question -- or ask the question again.

14 MR. BENNETT: Well --

15 MR. UTTER: His answer suggests a
 16 conversation.

17 MR. BENNETT: Yeah. I think the
 18 answer would -- if he answered "yes," it would
 19 suggest what that advice was to hold off.

20 May we speak with the witness?
 21 Because if the answer is "no," then that makes
 22 it easy.

23 May we speak with the witness out in
 24 the hallway for one brief second?

25 SPECIAL MASTER COHEN: One second.

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1 MR. BENNETT: So --

2 SPECIAL MASTER COHEN: Yes, you may.

3 MR. BENNETT: Thank you.

4 THE VIDEOGRAPHER: We are going off
 5 the record.

6 The time is 11:42.

7 (A short recess was taken.)

8 THE VIDEOGRAPHER: We are back on
 9 the record.

10 The time is 11:47.

11 You may proceed, Counsel.

12 MR. BENNETT: Counsel, Special
 13 Master Cohen, thank you for allowing us the
 14 opportunity to meet with the witness.

15 After consulting with the witness
 16 and speaking to counsel with DEA, we believe
 17 that the witness can answer the question
 18 whether he personally has had any communication
 19 with prosecutors in which he was asked to hold
 20 off on pursuing either administrative or civil
 21 relief during the pendency of a criminal
 22 investigation.

23 Any questions beyond that would
 24 implicate attorney-client privileged
 25 communications, matters of prosecutorial

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1 discretion, and the internal deliberative
 2 process of the United States Department of
 3 Justice, and we would instruct the witness not
 4 to answer beyond "yes" or "no" to the question
 5 I just stated.

6 MR. STEPHENS: He may have changed
 7 my question a little bit.

8 MR. BENNETT: I did. You said
 9 "Office of Diversion Control." I said him
 10 personally.

11 MR. STEPHENS: Okay. So, Special
 12 Master Cohen, I've got a yes-or-no question
 13 about communication that may have also filtered
 14 up to him. And that's my question.

15 SPECIAL MASTER COHEN: Why don't you
 16 start with that one, and we see how far we get.

17 MR. STEPHENS: Start with the first
 18 one?

19 SPECIAL MASTER COHEN: The first
 20 one, yeah.

21 MR. STEPHENS: Okay. Yes, sir.

22 BY MR. STEPHENS:

23 Q. So, Mr. Rannazzisi, did you
 24 personally have any communications, during your
 25 tenure as deputy assistant administrator, with

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members of U.S. Attorney's Offices or the criminal division of the Justice Department related to holding off on civil or administrative diversion matters while the Justice Department or U.S. Attorney's Office ran a criminal investigation?

MR. BENNETT: Objection. Scope. Attorney-client privilege.

You can answer that question "yes" or "no only."

THE WITNESS: No.

BY MR. STEPHENS:

Q. Mr. Rannazzisi --

MS. SINGER: I'm sorry to interrupt. But we're not getting it anymore.

THE REPORTER: Okay. Let's go off the record for a moment.

THE VIDEOGRAPHER: We are going off the record.

The time is 11:49.

(A short recess was taken.)

THE VIDEOGRAPHER: We are going back on the record.

The time is 11:52.

You may proceed, Counsel.

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BY MR. STEPHENS:

Q. All right. Mr. Rannazzisi, to follow up on my last question, did you have any communications in the diversion control group related -- that you're familiar with where U.S. Attorney's Offices conducting criminal investigations asked the Office of Diversion Control to hold off on pursuing civil or administrative diversion matters while the U.S. Attorney's Office ran a criminal investigation?

MR. BENNETT: Objection.

Attorney-client privilege, matters of prosecutorial discretion, and information that would reveal the internal deliberative process within the United States Department of Justice.

Instructing the witness he's not authorized to answer this question at this time.

MR. STEPHENS: It's -- it's a yes-or-no question. All I'm asking is whether he -- he was briefed, similar to the question that I asked him before, which is whether he had actual personal interaction with U.S. Attorney's Office.

MR. BENNETT: This -- this would go

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directly to the heart of attorney-client privileged communications when the U.S. Attorney's Office is discussing with DEA how to conduct criminal, civil and administrative cases.

It also goes into prosecutorial discretion as far as need to pursue civil cases versus when to pursue criminal cases and the order of those.

And I believe that this witness has not been authorized to answer those questions. And it would involve -- even answering just "yes" or "no" would involve the nature of the advice that was given or the communications by the attorneys and would instruct the witness that he's not authorized to answer that question.

SPECIAL MASTER COHEN: Okay. So because he specifically asked whether -- you used the word "hold off." And I think that that would, if the witness answered it, reveal attorney-client communications.

There may be something else you can ask that is truly a simple yes-or-no question that wouldn't get into the nature of the

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communication. But that isn't that question.

MR. STEPHENS: Let me try and restate.

BY MR. STEPHENS:

Q. Did you have communications with anyone in your diversion control group related to any request from a U.S. Attorney's Office involving the timing of parallel proceedings where the U.S. Attorney's Office was conducting a criminal investigation and the Office of Diversion Control was running a civil or administrative investigation?

MR. BENNETT: Objection. Scope.

That would require revealing that the U.S. Attorney's Office made such a -- a request or there was communications from the U.S. Attorney's Office.

So to the extent that your answer would disclose communications either with counsel of the DEA or with attorneys -- attorneys at the U.S. Attorney's Office, you're not authorized to answer it.

To the extent that you can answer without revealing those communications, you may answer the question.

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1 Do we need to consult out in the
2 hallway?

3 THE WITNESS: Just briefly.

4 MR. BENNETT: May we go off the
5 record again to consult with the witness about
6 matters of privilege?

7 THE VIDEOGRAPHER: We are going off
8 the record --

9 MR. BENNETT: Wait.

10 MR. STEPHENS: Yeah. No. I don't
11 object to that. Let him go off the record.

12 THE VIDEOGRAPHER: We are off the
13 record. The time is 11:56.

14 (A short recess was taken.)

15 THE VIDEOGRAPHER: We are back on
16 the record. The time is 12:03.

17 You may proceed, Counsel.

18 MR. BENNETT: Thank you.

19 We have had an opportunity to speak
20 with the witness regarding privileged issues
21 and after reviewing the question that was
22 asked, the answer by this witness would reveal
23 privileged attorney-client communications, and
24 as a result, I am instructing the witness he is
25 not authorized to answer those questions.

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1 MR. STEPHENS: Special Master Cohen,
2 I would ask for the instruction for the witness
3 to answer the question.

4 SPECIAL MASTER COHEN: I'm sorry. I
5 need to find it again.

6 MR. BENNETT: It's at 11:55:26.

7 SPECIAL MASTER COHEN: Thank you.

8 MR. BENNETT: And I think the
9 concern is, it says: Did you have any
10 communications related to a request from the
11 U.S. attorney's office involving the timing of
12 parallel proceedings, that would -- even a yes
13 or no answer would reveal that there had been a
14 request by the U.S. attorney's office involving
15 the timing of parallel proceedings which would
16 implicate attorney-client privileged
17 communications between the U.S. attorney's
18 office and the DEA, so this would be an
19 indirect way of obtaining the attorney-client
20 privileged communications.

21 SPECIAL MASTER COHEN: It is on the
22 edge of attorney-client privileged
23 communication and I'm going to have to fall off
24 the fence and say that the witness does not
25 have to answer the question. I know that you

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1 are trying to ask questions that don't get into
2 it and I respect that and we will try and let
3 you ask those questions, but I also have to
4 protect the privilege.

5 MR. STEPHENS: Thank you, Special
6 Master Cohen.

7 SPECIAL MASTER COHEN: Okay.

8 BY MR. STEPHENS:

9 Q. Mr. Rannazzisi, did the Office of
10 Diversion Control ever delay filing an
11 administrative action while a criminal
12 investigation was ongoing?

13 MR. BENNETT: You are authorized to
14 answer that question yes or no only.

15 THE WITNESS: Yes.

16 BY MR. STEPHENS:

17 Q. Mr. Rannazzisi, did the Office of
18 Diversion Control ever delay in filing a civil
19 action while a criminal investigation was
20 ongoing?

21 MR. BENNETT: You may answer that
22 question yes or no.

23 I will object to foundation because
24 the DEA doesn't actually file civil actions.

25 THE WITNESS: I am not sure about

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1 that.

2 BY MR. STEPHENS:

3 Q. Okay. So let's talk a little bit
4 about administrative actions.

5 One administrative action that the
6 Office of Diversion Control could pursue is an
7 immediate suspension order of a registrant,
8 correct?

9 A. Yes.

10 Q. And an immediate suspension order of
11 a physician who is a registrant immediately
12 susends that doctor's ability to prescribe
13 prescription opioids, true?

14 A. It prevents the doctor from
15 prescribing any controlled substance.

16 Q. Okay. How long, based on your
17 experience with situations where DEA delayed
18 filing an administrative action while a
19 criminal investigation was ongoing, what was
20 the longest amount of time that DEA held off on
21 filing an administrative action?

22 MS. SINGER: Objection. Foundation.
23 Compound question.

24 MR. BENNETT: Objection. Scope.
25 You can answer.

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1 THE WITNESS: I am just curious
 2 about -- well, my question to clarify is, when
 3 you say, "delay," what do you mean by "delay?"
 4 Do you mean -- well, I am just
 5 curious what delay means. How are you using
 6 that?

7 BY MR. STEPHENS:

8 Q. In a situation where the Office of
 9 Diversion Control was prepared to file an
 10 administrative action because its investigation
 11 hadn't matured to that point, in a situation
 12 where there was a criminal proceeding, I am
 13 asking you to identify the longest amount of
 14 time DEA held off on filing an administrative
 15 action while the criminal investigation was
 16 proceeding?

17 MR. BENNETT: Objection.

18 Foundation. Compound. Mischaracterizes prior
 19 testimony.

20 THE WITNESS: The answer is, I don't
 21 know, you know, the longest amount of time.

22 BY MR. STEPHENS:

23 Q. Can you give me an estimate as to a
 24 situation that you remember where DEA, their
 25 administrative action had ripened to the point

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1 where DEA was ready to proceed and DEA held off
 2 pending the completion of a criminal
 3 investigation?

4 MR. BENNETT: Objection.

5 MS. SINGER: Objection. Foundation
 6 and compound question.

7 MR. BENNETT: Objection.

8 Foundation. Compound. Mischaracterizes prior
 9 testimony and scope.

10 You can answer.

11 THE WITNESS: I don't know. I don't
 12 know.

13 BY MR. STEPHENS:

14 Q. Can you recall a situation where it
 15 was more than two months?

16 MS. SINGER: Objection. Asked and
 17 answered.

18 MR. BENNETT: Same objections, and I
 19 will join the asked and answered.

20 THE WITNESS: I don't know. I just
 21 don't know.

22 BY MR. STEPHENS:

23 Q. Can you remember a situation where
 24 it was as long as 12 months?

25 MS. SINGER: Objection. Asked and

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1 answered.
 2 MR. BENNETT: Same objections.
 3 THE WITNESS: I -- again, I don't
 4 know. I mean, I get the immediate -- the
 5 orders to show cause and I review them. I have
 6 no idea when the case was done. All I -- when
 7 it's presented to me for review, I just go by
 8 what is on the document.

9 BY MR. STEPHENS:

10 Q. Who on your --

11 A. Or the document.

12 Q. I'm sorry, Mr. Rannazzisi. Who on
 13 your team at the Office of Diversion Control
 14 during your tenure would have had that
 15 information?

16 MS. SINGER: Objection. Scope.

17 MR. BENNETT: Objection. Vague.

18 THE WITNESS: The pharmaceutical
 19 investigations section, or the exec in charge
 20 of handling the pharmaceutical investigations.

21 BY MR. STEPHENS:

22 Q. Okay. And what is the title of the
 23 head of the pharmaceutical investigation
 24 section, is it a section chief?

25 A. Section chief, yes.

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1 Q. Who was the section chief when you
 2 left in 2015?

3 MR. BENNETT: Objection. Scope.

4 You can answer.

5 THE WITNESS: They changed over.
 6 I'm not -- I think it might have been Barbara
 7 Boockholdt or Cathy Gallagher.

8 BY MR. STEPHENS:

9 Q. Okay. Do you recall who was the

10 section chief for the pharmacy --

11 A. I'm sorry, that was pharmaceutical
 12 regulatory. Okay. Pharmaceutical
 13 investigations was running a different area and
 14 so Boockholdt or Gallagher or Carter were in
 15 charge of pharmaceutical regulatory
 16 investigations at that point in time, and then
 17 pharmaceutical investigations section, the
 18 other side, that was -- I just don't recall who
 19 was running pharmaceutical investigations at
 20 that point in time.

21 Q. Okay. Do you recall who ran that
 22 section, pharmaceutical investigations section
 23 at any point in time from -- during your tenure
 24 as deputy assistant administrator from '05 to
 25 '15?

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1 MR. BENNETT: Objection. Scope.
 2 You can answer.

3 THE WITNESS: John Chapinski, Robert
 4 Hill, Matt Murphy, I think that pretty much
 5 covered it.

6 BY MR. STEPHENS:

7 Q. Okay. Mr. Rannazzisi, I would like
 8 to transition and ask you some background
 9 questions about some of your experience based
 10 on other positions you held at DEA during your
 11 career.

12 MR. BENNETT: Counsel, I know we had
 13 to step out a couple of times but it is after
 14 12:15. Not sure when you want to take lunch.
 15 It sounds like you were going into a new
 16 transition area.

17 MR. STEPHENS: I am going into a new
 18 area. If you folks want to break and that's
 19 good with the Special Master and the court
 20 reporter and the witness, I am fine with that.

21 MR. BENNETT: I'll leave it up to
 22 the witness. I am happy to keep going, I'm
 23 happy to take our lunch break now, whatever he
 24 prefers.

25 THE WITNESS: How much time do you

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1 think you have?

2 MR. STEPHENS: I still have a lot of
 3 questions.

4 THE WITNESS: Okay. Why don't we
 5 break then.

6 THE VIDEOGRAPHER: We are going off
 7 the record. This is the end of Media Unit No.
 8 3. The time is 12:13.

9 (A short recess was taken.)

10 THE VIDEOGRAPHER: We are going back
 11 on the record.

12 This is the start of Media Unit No.

13 4.

14 The time is 1:05.

15 You may proceed, Counsel.

16 BY MR. STEPHENS:

17 Q. Mr. Rannazzisi, good afternoon.

18 A. Good afternoon.

19 Q. Earlier today you were asked a few
 20 questions about ARCOS, and you had mentioned
 21 IMS data.

22 Do you are call that?

23 A. Yes.

24 Q. Are --

25 A. Yes.

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1 Q. Sir, are you aware whether or not
 2 IMS data includes distribution data?

3 MS. SINGER: Objection. Vague.

4 THE WITNESS: It's my understanding
 5 that IMS data includes data for dispensing from
 6 pharmacies.

7 BY MR. STEPHENS:

8 Q. Okay. So your understanding is that
 9 IMS data is dispensing data; is that fair?

10 A. Yes.

11 Q. You had also -- you mentioned a
 12 distributor briefing.

13 Do you recall that?

14 A. Yes.

15 Q. Okay. And you had said something to
 16 the effect of, "They assured us that they
 17 understood."

18 Do you recall saying that?

19 MR. BENNETT: Objection.

20 Mischaracterizes past testimony.

21 Go ahead.

22 THE WITNESS: The -- yeah. Before
 23 they left, they were asked if they understood,
 24 and they said yes.

25 BY MR. STEPHENS:

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1 Q. Okay. Did you, sir, personally
 2 attend any distributor briefing with any retail
 3 chain pharmacy, including Walmart, Walgreens,
 4 Rite Aid, CVS, HBC, Giant Eagle?

5 A. I personally did not.

6 Q. Are you aware as to whether or not
 7 anyone who worked for you conducted a
 8 distributor briefing with any of those retail
 9 chain pharmacies?

10 MR. BENNETT: Objection. Vague.

11 You can answer.

12 THE WITNESS: There were meetings
 13 between some of those companies and staff at
 14 DEA but not in the -- in the -- from the format
 15 of the distributor briefing.

16 BY MR. STEPHENS:

17 Q. Okay. So no --

18 A. That I know of anyway.

19 Q. Right.

20 A. That I know of anyway.

21 Q. So just so the record's clear,
 22 you're not aware, sir, of any distributor
 23 briefing conducted by DEA with the retail chain
 24 pharmacies that I've just identified; is that
 25 fair?

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1 MR. BENNETT: Objection. Misstates
2 testimony.

3 You can answer.

4 THE WITNESS: I don't -- I -- I
5 don't know personally. It doesn't mean it
6 didn't happen. I just am not aware of any.

7 BY MR. STEPHENS:

8 Q. All right. Very well.

9 Sir, I'd like to ask you some
10 questions about some Title 21 issues and your
11 responsibility and your experience
12 communicating DEA's position on diversion
13 issues to registrants and Congress and your
14 duties and responsibilities in expressing where
15 diversion was occurring when you spoke with
16 those folks. Okay?

17 A. Okay.

18 Q. And those tasks would have fallen
19 within the scope of your general duties during
20 your career as deputy assistant administrator;
21 is that fair?

22 MS. SINGER: Objection. Compound
23 question. Asked and answered.

24 MR. UTTER: Same objection.

25 Go ahead.

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1 THE WITNESS: Speaking to Congress
2 and speaking to the general public was part of
3 my duties as a deputy assist and administrator,
4 yes.

5 BY MR. STEPHENS:

6 Q. The prescribers, like manufacturers,
7 distributors and pharmacies, are registrants,
8 true?

9 A. Yes, sir.

10 Q. And it's fair to say that the
11 overwhelming majority of prescribing in America
12 during your tenure as deputy assistant
13 administrator was conducted responsibly.

14 MR. BENNETT: Objection. Vague.

15 MS. SINGER: Objection. Foundation.

16 MR. BENNETT: Scope.

17 MR. UTTER: Same objection.

18 Go ahead.

19 THE WITNESS: I believe that the
20 vast majority of practitioners are doing
21 exactly what they were supposed to be doing,
22 yes.

23 BY MR. STEPHENS:

24 Q. Would you also agree that good
25 doctors and pharmacists were often the first to

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1 notify DEA about suspected diverters?

2 MS. SINGER: Objection. Vague.

3 Compound question. Outside of the scope.

4 MR. BENNETT: Objection. Vague.

5 Scope.

6 MR. UTTER: Go ahead.

7 MR. BENNETT: You can answer.

8 THE WITNESS: I don't know if it's
9 the first. I -- we -- we had intelligence come
10 in from physicians. We've had intelligence
11 come in from pharmacies as well as regulatory
12 boards. But I don't know if it's the first --
13 you know, the first contact with that
14 particular registrant that they were reporting.

15 BY MR. STEPHENS:

16 Q. Okay. Mr. Rannazzisi, what I'd like
17 to do is share with you a copy of some
18 congressional testimony you provided on July
19 12, 2007. Okay?

20 A. Okay.

21 MR. STEPHENS: And, Bonnie, if you
22 could please mark this as the next in order.

23 (Deposition Exhibit 7 was marked for
24 identification.)

25 BY MR. STEPHENS:

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1 Q. Mr. Rannazzisi, I direct you to Page
2 218 of the transcript. Or let -- let's start
3 with Page 217.

4 Are you with me on Page 217?

5 A. Yes.

6 Q. Okay. And just to identify the
7 document, Mr. Rannazzisi, it's dated July 12.
8 These are Questions For the Hearing Record for
9 Joseph T. Rannazzisi, Deputy Assistant
10 Administrator, Office of Diversion Control.

11 Do you see that?

12 A. Yes.

13 Q. And can you describe for the record,
14 when you would get these -- these questions you
15 would consider them in providing written
16 responses back that would get inserted into the
17 congressional record?

18 Is that fair and accurate?

19 A. Yes.

20 MS. SINGER: Objection. Vague.

21 BY MR. STEPHENS:

22 Q. Okay. Sir, what I'd -- I'd like to
23 do is direct you to the second question, which
24 is on the bottom of 217 and will go to the top
25 of 2 -- Page 218. And in your response, I'm

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1 going to direct you to the very first couple of
 2 sentences in the response.

3 And, sir, just let me know when
 4 you've had an opportunity to read that.

5 Have you had an opportunity to read
 6 that paragraph, Mr. Rannazzisi?

7 A. I just want to read the --

8 Q. Sure.

9 A. -- whole response.

10 Okay.

11 Q. All right. So, Mr. Rannazzisi, the
 12 question framed by Congress, No. 2 there,
 13 states, quote: During the hearing, testimony
 14 was offered that indicated investigations of
 15 pain management doctors and other doctors by
 16 DEA have caused concern that physicians who
 17 practice in this area of medicine are being
 18 targeted despite the service they provide to a
 19 number of pain sufferers. Does DEA believe this
 20 characterization is correct? And what is the
 21 process DEA uses to identify and investigate
 22 doctors whose practices dispense large
 23 quantities of opioids and other pain relievers?

24 Sir, did I --

25 MS. SINGER: Objection. Compound

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1 question.

2 BY MR. STEPHENS:

3 Q. Sir, did I read that question
 4 accurately?

5 MS. SINGER: Objection. Vague and
 6 compound.

7 THE WITNESS: Yes.

8 BY MR. STEPHENS:

9 Q. Okay. And then, sir, your
 10 response -- and I'm quoting from the second
 11 sentence under response -- says, quote: The
 12 overwhelming majority of prescribing done by
 13 physicians in America is conducted responsibly.
 14 Often it is these doctors and pharmacists who
 15 dispense the medication who are the first to
 16 alert law enforcement to potential prescription
 17 problems.

18 Do you see that?

19 A. Yes.

20 Q. Did I read that accurately?

21 A. Yes.

22 Q. Is that your submission back to the
 23 committee on the judiciary of the House of
 24 Representatives for this hearing on July 12,
 25 2007?

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1 MR. BENNETT: Objection. Form.
 2 Objection. It's incomplete reading of his
 3 response to the question. And so I would
 4 object under Rule 106.

5 THE WITNESS: First of all, this is
 6 not my response. It's the Department of
 7 Justice and the administration's response. And
 8 everything must be vetted through them.

9 So regardless of what my feelings
 10 were at the time, if the department or the --
 11 the administration, through the vetting
 12 process, felt that that's what they wanted to
 13 put in, that's what was put in.

14 BY MR. STEPHENS:

15 Q. So then, sir, let me ask you this
 16 question: As of July 12, 2007, did you agree
 17 with the statement that the overwhelming
 18 majority of prescribing done by physicians in
 19 America is conducted responsibly?

20 Did you agree with that?

21 MR. BENNETT: Objection. Scope.

22 You're not authorized to give
 23 personal opinions regarding nonpublic facts or
 24 information you acquired in the performance of
 25 your duties. You are not -- not -- you are

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1 also not authorized to disclose any information
 2 regarding internal deliberative process or
 3 recommendations that you made.

4 To the extent that you have a
 5 personal opinion that it does not rely on
 6 internal deliberative process or nonpublic
 7 factual information, you may give it on behalf
 8 of yourself personally but are not speaking on
 9 behalf of DEA.

10 THE WITNESS: Could -- could you
 11 repeat the question one more time.

12 BY MR. STEPHENS:

13 Q. Yes.

14 As of July 12, 2007, did you agree
 15 with the statement that the overwhelming
 16 majority of prescribing done by physicians in
 17 America is conducted responsibly?

18 MR. BENNETT: Same instruction.

19 THE WITNESS: I believe that the
 20 vast majority of physicians are prescribing
 21 responsibly, yes.

22 BY MR. STEPHENS:

23 Q. Do you also agree with the statement
 24 in the next sentence, Mr. Rannazzisi, that
 25 often is it these doctors and pharmacists who

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1 dispense the medication who are the first to
 2 alert law enforcement to potential prescription
 3 problems?

4 MR. BENNETT: Objection. Same
 5 instruction.

6 THE WITNESS: If you're talking
 7 about prescription fraud, fraudulent
 8 prescriptions, for instance, if a -- a
 9 pharmacist receives a prescription and he calls
 10 the doctor and the doctor says, "I did not
 11 write that prescription," and they make a call
 12 to the police, yes. That -- I would agree.
 13 And I think that's what they were getting at at
 14 the time.

15 BY MR. STEPHENS:

16 Q. So you don't disagree with the
 17 statement -- with the context you just
 18 provided; is that fair, Mr. Rannazzisi?

19 A. If the context is --

20 MS. SINGER: Objection.

21 THE WITNESS: Oh.

22 MS. SINGER: Mischaracterizes the
 23 witness's testimony.

24 THE WITNESS: If we're talking about
 25 a prescription fraud case where someone is

1 passing bad paper to a pharmacist, and the
 2 pharmacist calls the doctor, generally the
 3 pharmacist or the doctor is going to call and
 4 say, "I just got a bad script. What do you
 5 want me to do with it?" And it either goes to
 6 law enforcement, the state board, or DEA.

7 So yes, in that situation,
 8 absolutely.

9 BY MR. STEPHENS:

10 Q. Okay. Mr. Rannazzisi, I'm finished
 11 with that exhibit there, sir.

12 In other testimony that you provided
 13 to Congress, you testified about the -- the
 14 percentage of prescribers you thought were
 15 overprescribed.

16 Do you recall that?

17 MR. UTTER: Object to form.

18 Go ahead.

19 THE WITNESS: I -- I've done a lot
 20 of testimony to Congress. Do -- if -- if you
 21 have a transcript or...

22 MR. STEPHENS: Yes, sir. I do.

23 And if I could please have that
 24 marked as the next in order.

25 (Deposition Exhibit 8 was marked for

1 identification.)

2 THE WITNESS: Thank you.

3 BY MR. STEPHENS:

4 Q. And here, Mr. Rannazzisi, I'm going
 5 to direct you to Page 76.

6 A. May -- may I go ahead and read it?

7 Q. Excuse me?

8 A. May I go ahead and read it.

9 Q. Yes. And I'll -- I'll point you to
 10 it, Mr. Rannazzisi, just so you have it.

11 A. Sure.

12 Q. Towards the bottom of the page,
 13 there's a statement by Mr. Burgess. And then,
 14 in the second-to-last paragraph, you have a
 15 response. It is that question and answer that
 16 I'll direct your attention to, sir.

17 A. Okay.

18 Q. From -- Mr. Burgess says, quote --
 19 this is on Page 76. This is hearing dated
 20 April 29, 2014, called "Examining the Growing
 21 Problems of Prescription Drug and Heroin Abuse
 22 Before the Subcommittee on Oversight and
 23 Investigations."

24 And, sir, now picking up on the
 25 bottom of Page 76, Mr. Burgess says the

1 following, quote: I don't want to put words in
 2 his mouth, but Mr. Rannazzisi seemed to imply
 3 that we are overprescribing. Is that a fair
 4 assessment of your testimony?"

5 Then, sir, it indicates that you
 6 responded, quote: I think that, if you are
 7 talking about 99.5 percent of the prescribers,
 8 no, they are not overprescribing. But our
 9 focus is in rogue pain clinics and rogue
 10 doctors who are overprescribing.

11 Sir, do you see that?

12 A. Yes.

13 Q. Did I read that accurately?

14 A. Yes.

15 Q. Was that a statement that you made
 16 in front of the subcommittee on oversight on
 17 April 29, 2014?

18 MR. BENNETT: Objection.

19 THE WITNESS: Yes. Except -- except
 20 you didn't include the last line, which it
 21 says, actually, they're prescribing -- if
 22 they're -- they are prescribing illegally.
 23 They are not overprescribing; they're illegally
 24 prescribing.

25 BY MR. STEPHENS:

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1 Q. Right.
 2 And the -- Mr. Rannazzisi, who
 3 you're talk about there prescribing illegally,
 4 that's the one half of 1 percent that was
 5 drawing your focus at rogue pain clinic and
 6 their rogue doctors; is that fair?
 7 MR. BENNETT: Objection. Form.
 8 THE WITNESS: Yes. I would say so,
 9 yes.
 10 BY MR. STEPHENS:
 11 Q. Okay. So --
 12 MS. SINGER: We'll move to lodge a
 13 Rule 106 objection.
 14 Mr. Stephens has made the point that
 15 this was a small fraction. But I think you
 16 have to read on in this testimony for the full
 17 context.
 18 BY MR. STEPHENS:
 19 Q. So, Mr. Rannazzisi, it was your
 20 testimony that 99.5 percent of prescribers were
 21 not overprescribing, true?
 22 MR. BENNETT: Objection. Form.
 23 THE WITNESS: It -- it was my
 24 testimony in this context we were talking
 25 about -- and I think later on I say that that

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1 small percentage is doing a huge amount of
 2 harm.
 3 MS. MAINIGI: Special Master Cohen,
 4 can I just lodge my own objection to continued
 5 coaching of this witness and this time in the
 6 guise of a Rule 106 objection.
 7 MS. SINGER: It was a legitimate 106
 8 objection if you read on in the record here.
 9 BY MR. STEPHENS:
 10 Q. So, Mr. Rannazzisi, if I could, I
 11 will ask you --
 12 MR. BENNETT: Wait a second. The
 13 witness I don't think got a chance to finish
 14 his answer when he was interrupted by counsel.
 15 MS. MAINIGI: I'm sorry. I thought
 16 he was done.
 17 MR. BENNETT: Maybe I misunderstood
 18 it, but I thought he was still answering the
 19 question.
 20 SPECIAL MASTER COHEN: I don't think
 21 so.
 22 MS. MAINIGI: I thought he was.
 23 MR. BENNETT: Mr. Rannazzisi, do you
 24 need to complete your answer to the last
 25 question?

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1 THE WITNESS: No, that's fine.
 2 MS. MAINIGI: Sorry.
 3 BY MR. STEPHENS:
 4 Q. Mr. Rannazzisi, are you good?
 5 A. Yes.
 6 Q. Can I move on to my next question,
 7 sir?
 8 A. Yes.
 9 Q. All right. Is it fair to say that a
 10 prescription for a controlled substance issued
 11 for a legitimate medical purpose by a
 12 registered doctor in the usual course of her
 13 professional practice is not diversion?
 14 MS. SINGER: Objection. Vague.
 15 Compound question.
 16 MR. BENNETT: Objection. Scope.
 17 THE WITNESS: If the -- if the
 18 doctor has made a determination, a medical
 19 determination that that patient needs that
 20 controlled substance to treat a specific
 21 ailment and the prescription is written
 22 appropriately per the requirements in the
 23 C.F.R. and the CSA, yes, then I would not think
 24 that would be diversion.
 25 BY MR. STEPHENS:

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1 Q. Okay. And if the pharmacy filled
 2 that same prescription, that also is not
 3 diversion, correct?
 4 MR. BENNETT: Objection. Scope.
 5 Incomplete hypothetical.
 6 THE WITNESS: I can only go back to
 7 the regulations. If the pharmacist, who has a
 8 corresponding responsibility to ensure that a
 9 prescription is effective and valid, if a
 10 pharmacist fills the prescription based on his
 11 corresponding responsibility, his red flags
 12 analysis to ensure that that prescription is
 13 effective and valid, yes, I don't think that
 14 would be diversion as long as he's resolved the
 15 red flags that are presented with the
 16 prescription.
 17 BY MR. STEPHENS:
 18 Q. Okay. Now, sir, in your testimony,
 19 you had mentioned that DEA's focus was on rogue
 20 pain clinics and rogue doctors, correct?
 21 A. Yes.
 22 Q. Those rogue doctors often worked out
 23 of rogue pain clinics; is that fair?
 24 MS. SINGER: Objection. Vague.
 25 MR. UTTER: Object to scope.

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1 MR. STEPHENS: I will withdraw the
2 question.

3 BY MR. STEPHENS:

4 Q. Sir, is it fair that DEA focused its
5 attention in the 2005 to, say, 2009 era on
6 rogue Internet pharmacies?

7 MR. BENNETT: Objection. Scope.

8 You can answer.

9 THE WITNESS: I would say the -- up
10 until at least 2008, after the Ryan Hate Act
11 was passed, it pretty much shut down most of
12 the Internet pharmacies and there was a switch
13 to rogue pain clinics. There has always been
14 rogue pain clinics but the rogue pain clinics
15 got -- increased in numbers quite a bit right
16 after Ryan Hate was passed.

17 BY MR. STEPHENS:

18 Q. Okay. So for general purposes, it's
19 fair that you were focusing your attention on
20 rogue Internet pharmacies which were a
21 significant problem in the 2005 to 2008 era,
22 and then in that era approximately -- that
23 approximate period of time, 2008, 2009,
24 legislation passed and then after the
25 legislation passed, DEA takes enforcement

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1 against some of the rogue Internet pharmacies,
2 you started to focus more of your attention on
3 rogue pain clinics; is that fair?

4 MS. SINGER: Objection. Compound
5 question.

6 MR. BENNETT: Objection. Compound
7 question and vague.

8 THE WITNESS: Actually, no. We had
9 taken -- investigated and taken action against
10 rogue Internet pharmacies before Ryan Hate was
11 passed. Actually, I think Ryan Hate was passed
12 because of all the inactivity we had done in
13 the supply chain related to Internet
14 pharmacies.

15 And to clarify, while we had many
16 Internet pharmacy cases, we were also doing
17 rogue doctors, rogue pharmacies and rogue pain
18 clinics at that point in time, too, so we tried
19 to focus on where the threat was and at that
20 point in time, we had threats but it just
21 seemed that the vast majority of the cases were
22 Internet-based. However, there were still
23 rogue pain clinics, rogue pharmacies and rogue
24 doctors that were operating independently in
25 the neighborhoods and communities at that time.

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1 BY MR. STEPHENS:

2 Q. Let me say it this way, and just for
3 your benefit, Mr. Rannazzisi, I am just trying
4 to understand what the primary focus was in
5 2005 when you start to after the -- immediately
6 after the passage of the Ryan Hate Act, and
7 then if DEA shifted its focus a bit, what it
8 shifted its focus to, so let me -- do you
9 understand that that's -- I am asking a couple
10 of questions on that, okay?

11 MR. BENNETT: Objection. Form.

12 MR. STEPHENS: Just trying to lay a
13 predicate for him, James.

14 BY MR. STEPHENS:

15 Q. Now, in the 2005 to 2008 era leading
16 up to the Ryan Hate Act, DEA was focused on
17 rogue Internet pharmacies, true?

18 MR. BENNETT: Objection. Asked and
19 answered.

20 MR. UTTER: Objection.

21 MR. BENNETT: Form.

22 MR. UTTER: Same objection, sorry.

23 THE WITNESS: We were conducting
24 Internet pharmacy investigations because there
25 were quite a few of them, but we were also

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1 doing investigations in other areas of
2 diversion, including, you know, rogue pain
3 clinics, rogue doctors and rogue pharmacies
4 that were diverting.

5 BY MR. STEPHENS:

6 Q. Okay. Is it safe to say that you
7 focused a greater percentage of your energy on
8 rogue pain clinics after the Ryan Hate Act is
9 passed in 2008 and after DEA goes through a
10 series of enforcement actions against rogue
11 Internet pharmacies; isn't that fair?

12 MR. BENNETT: Objection. Vague.
13 Compound.

14 MR. UTTER: Objection. Same
15 objections.

16 THE WITNESS: Our resources shifted
17 to rogue pain clinics because the Internet
18 pharmacy cases pretty much went away. There
19 was no more domestic brick and mortar
20 pharmacies that were fulfilling Internet orders
21 because Ryan Hate pretty much eliminated them,
22 so the resources were shifted over to rogue
23 pain clinics.

24 BY MR. STEPHENS:

25 Q. Mr. Rannazzisi, would you agree that

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1 the vast majority of registrants complied with
 2 the statutory and regulatory obligations under
 3 the Controlled Substances Act?

4 MS. SINGER: Objection. Vague and
 5 scope.

6 MR. BENNETT: Objection. Calls for
 7 speculation. Scope.

8 MR. UTTER: Same objections.

9 Go ahead.

10 THE WITNESS: Are you talking about
 11 particular groups of registrants or classes of
 12 registrants or just the registrants in general,
 13 because the doctors make up 1.3 million of the
 14 registrant population and more now, so I said a
 15 vast majority of doctors are actually acting
 16 responsibly.

17 So if you are taking that into
 18 account, then yes, because the vast majority of
 19 the registrant population are physicians.

20 BY MR. STEPHENS:

21 Q. So you would agree with the
 22 statement that says the vast majority of DEA
 23 registrants adhere to their statutory and
 24 regulatory obligations under the CSA, true?

25 MR. BENNETT: Objection. Asked and

Page 202

1 answered.

2 MR. UTTER: Same objection.

3 Go ahead. You can answer again.

4 THE WITNESS: Again, yes, because
 5 the vast majority of the registrant population
 6 are physicians and as I said previously, most
 7 of the physicians, a vast majority of the
 8 physicians are operating responsibly.

9 BY MR. STEPHENS:

10 Q. Sir, you had -- in response to some
 11 questions from my colleague earlier this
 12 morning, there were some questions about
 13 diversion and diversion occurring from medicine
 14 cabinet involving family and friends.

15 Do you see that -- or do you
 16 remember that, I should say.

17 A. I remember that, yes.

18 Q. All right. Is it fair to say that
 19 the most -- that the most common method in
 20 which controlled substance prescriptions are
 21 diverted may be through family and friends?

22 MS. SINGER: Objection. Vague.
 23 Objection. Scope.

24 MR. BENNETT: I would join in both
 25 of those objections. Also object, incomplete

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1 hypothetical and calls for speculation.

2 MR. UTTER: Same objections.

3 Go ahead.

4 THE WITNESS: That if you are basing
 5 that on a survey that was done, yes, but that's
 6 not what we were seeing in the Drug Enforcement
 7 Administration when we were out there.

8 BY MR. STEPHENS:

9 Q. Did you ever inform the Congress
 10 that as DEA increased its understanding of
 11 where abusers acquired prescription drugs, that
 12 preliminary data suggested that the most common
 13 method in which controlled substance
 14 prescriptions are diverted may be through
 15 family and friends?

16 A. That was an administration opinion
 17 and again, they were talking about the trading
 18 of specific pills. Somebody got a pill and
 19 handed it off, but as far as volume, no. I
 20 mean, that is not what we were seeing.

21 Q. DEA made that statement from time to
 22 time about the most common form of diversion
 23 being through family and friends, right?

24 A. That was the administration --

25 MS. SINGER: Objection. Foundation.

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1 MR. BENNETT: I will join the
 2 foundation objection. Objection. Scope.

3 MR. STEPHENS: I will re-ask the
 4 question.

5 BY MR. STEPHENS:

6 Q. Mr. Rannazzisi, you are aware that
 7 DEA made the statement during your time as
 8 deputy assistant administrator, that the
 9 preliminary data suggested that the most common
 10 method in which controlled substance
 11 prescriptions are diverted may be through
 12 family and friends?

13 MS. SINGER: Objection. Foundation.

14 MR. BENNETT: Objection. Vague.

15 THE WITNESS: Again, that was the
 16 administration's position. DEA could only
 17 report what the administration's position is at
 18 the time. We are not autonomous.

19 BY MR. STEPHENS:

20 Q. Isn't -- by administration, you mean
 21 the Drug Enforcement Administration or do you
 22 mean the administration of the White House, the
 23 executive branch?

24 A. The executive branch.

25 Q. Okay. So if I understand you

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1 correctly, there would have been times where --
 2 and stop me if this is not accurate, were there
 3 times when you were providing information to
 4 Congress under your name where you were making
 5 statements that you did not agree with?

6 MS. SINGER: Objection. Vague.

7 MR. BENNETT: Objection. Scope.

8 You are not authorized to disclose
 9 any information regarding the internal
 10 deliberative process or recommendation that you
 11 made with the Department of Justice. You also
 12 are not authorized to give opinions regarding
 13 nonpublic facts or information you acquired in
 14 the performance of your official duties and you
 15 are not authorized to disclose any nonpublic
 16 recommendations you made or you are aware of
 17 concerning any proposed agency action or
 18 position.

19 To the extent that you can offer an
 20 opinion that involves public facts or
 21 information you acquired outside of the
 22 performance of your official duties, you may
 23 give your personal opinion, but you are not
 24 speaking on behalf of the DEA.

25 THE WITNESS: So all this occurred

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1 when I was working with DEA in my official
 2 capacity as a deputy assistant administrator
 3 and while I was the witness that testifies, the
 4 message comes from the Department of Justice
 5 and the White House.

6 You are always told that you are an
 7 administration witness, so based on that, that
 8 was the administration's position and, you
 9 know, I took the position that if that's the
 10 administration's position, then that's what it
 11 would be.

12 BY MR. STEPHENS:

13 Q. Okay. Mr. Rannazzisi, with --
 14 someone with a 25 year-plus career with DEA,
 15 was it your understanding when you were
 16 providing information through to Congress,
 17 either through testimony or through the written
 18 record, that the accuracy of that information
 19 was subject to 18 U.S.C. 1001?

20 MR. BENNETT: Objection. Calls for
 21 a legal conclusion. Scope.

22 The witness is not authorized to
 23 discuss his opinion regarding what the law says
 24 or does not say. It is also argumentative.

25 The witness can answer if he has an

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1 answer in his personal capacity, but not on
 2 behalf of the DEA.

3 THE WITNESS: That information was
 4 based on a survey, the National Survey on Drug
 5 Use and Health, and yes, that's what the survey
 6 said.

7 BY MR. STEPHENS:

8 Q. Okay. But my question is a little
 9 bit different, Mr. Rannazzisi, and it's --
 10 whether it was your understanding as deputy
 11 assistant administrator from 2005 to 2015, and
 12 as someone who's testified repeatedly in front
 13 of Congress, that your testimony was subject to
 14 Title 18 U.S.C. 1001 which requires an honest
 15 response to information provided through law
 16 enforcement or to Congress?

17 MS. SINGER: Objection.

18 MR. BENNETT: Objection.

19 Argumentative. Calls for a legal conclusion.
 20 Outside the scope of his authorization.

21 MS. SINGER: Counsel is also
 22 testifying.

23 MR. UTTER: Object to form.

24 Go ahead.

25 THE WITNESS: Again, that was the

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1 administration's position based on the
 2 information that they had, as a witness for the
 3 administration, and I relay and testified to
 4 what the administration's position is.

5 BY MR. STEPHENS:

6 Q. Okay. So my question is not on that
 7 specific fact now. My question relates to what
 8 your understanding was of your obligations and
 9 responsibilities when you are testifying in
 10 front of Congress, okay?

11 MR. UTTER: I'm going to object to
 12 your characterization as a fact.

13 Go ahead, you can answer.

14 MR. BENNETT: And I will also
 15 object. Asked and answered. This is the third
 16 time you've asked this question where the
 17 witness has answered it each time.

18 BY MR. STEPHENS:

19 Q. Just yes or no, Mr. Rannazzisi. Was
 20 it your understanding that the information that
 21 you provided to Congress when you testified in
 22 front of Congress was subject to Title 18
 23 U.S.C. 1001?

24 MR. BENNETT: Objection. Asked and
 25 answered. Argumentative.

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1 MS. SINGER: Objection. Calls for a
2 legal conclusion.

3 THE WITNESS: The administration's
4 position and the fed testimony through the
5 administration, that was their position. It
6 was based on a survey and I presented the
7 administration's position. I was not
8 testifying on behalf of Joe Rannazzisi, I was
9 testifying on behalf of the administration in
10 2007.

11 MR. STEPHENS: Special Master Cohen,
12 at this point, I would ask --

13 SPECIAL MASTER COHEN: You guys are
14 kind of talking past each other.

15 MR. STEPHENS: I tried to set that
16 up with a predicate to my last question.

17 SPECIAL MASTER COHEN: You guys are
18 kind of talking past each other. The last
19 question you asked was a yes or no question for
20 your understanding, and I think you can answer
21 it with yes or no for your understanding.

22 You keep kind of taking that
23 question he is asking and applying it to
24 something else, so I want you to kind of listen
25 to the question as it is asked, and see if you

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1 can answer with a yes or no, again, regarding
2 your understanding.

3 Let me just add one other thing. If
4 there is a way that you can ask a question
5 without reference to the statute, maybe you
6 can't, then that might help.

7 BY MR. STEPHENS:

8 Q. Mr. Rannazzisi, was it your
9 understanding that when you testified in front
10 of Congress, you were testifying under oath and
11 needed to tell the truth?

12 A. Yes.

13 Q. So I would like to go back to the
14 start of your tenure, Mr. Rannazzisi, in 2005
15 and 2006. Okay?

16 A. Yes.

17 Q. Now we had talked about rogue
18 Internet pharmacies a few minutes ago, correct?

19 A. Yes.

20 Q. Would you agree that not all
21 Internet pharmacies were rogue Internet
22 pharmacies who were diverting opioids?

23 A. No. In fact, I can't think of an
24 Internet pharmacy that was operating at that
25 point in time that wasn't rogue.

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1 MR. STEPHENS: If I could ask, if
2 you could mark this as next in order, Bonnie.
3 Thank you.

4 (Deposition Exhibit 9 was marked for
5 identification.)

6 BY MR. STEPHENS:

7 Q. So this has been marked as Exhibit
8 9. It is a current transcript from May 16,
9 2007, entitled: "Rogue Online Pharmacies, the
10 growing problem with Internet drug trafficking,
11 a hearing before the Committee of the Judiciary
12 of the United States Senate."

13 And, sir, I would direct your
14 attention to Page 52.

15 So, Mr. Rannazzisi, on Page 52, it's
16 entitled: "Questions for the hearing record
17 for Joseph Rannazzisi deputy assistant
18 administrator, office of diversion and
19 control."

20 And then the first question states:
21 "At the hearing, witnesses provided testimony
22 about how easy it is for youth and others to
23 obtain prescription drugs illegally on the
24 Internet."

25 And it's then 1 Sub A:

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1 "Approximately how many websites currently
2 offer to sell controlled substances illegally
3 over the Internet?"

4 Do you see that, sir?

5 A. Yes.

6 Q. Okay. Now I'm going to direct your
7 attention to the -- in the very middle of the
8 response, and there is a sentence there that
9 states: "It should be noted that there are
10 legitimate pharmacies that provide controlled
11 substances via the Internet and operate daily
12 within the boundaries of the law."

13 Do you see that?

14 MR. UTTER: Take your time to read
15 the document so you are familiar with it.

16 THE WITNESS: Okay.

17 BY MR. STEPHENS:

18 Q. So my question, sir, is: Did you
19 inform the United States Senate on May 16,
20 2007, that it was the administration's position
21 that it should be noted that there are
22 legitimate pharmacies that provide controlled
23 substances via the Internet and operate daily
24 within the boundaries of the law?

25 A. Yes, but there is a difference

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1 like a DEA document so I am just curious.
 2 There is no Bates number. There's no document
 3 number on it.

4 MR. STEPHENS: Let me suggest this,
 5 James, I will move on. I will come back to
 6 this and answer that question for you. How's
 7 that?

8 MR. BENNETT: That's fine. Thank
 9 you.

10 BY MR. STEPHENS:

11 Q. Mr. Rannazzisi, let me ask you this:
 12 Do you recall giving presentations where, in
 13 your description of what a rogue pharmacy was,
 14 you told people that they were not chain
 15 pharmacies?

16 MR. UTTER: Don't look -- he is not
 17 making a reference to the exhibit, so you are
 18 not confused. He is asking a question
 19 independent of the exhibit.

20 THE WITNESS: If I was reporting
 21 what the majority of the pharmacies were, I
 22 would say yes, a vast majority of the
 23 pharmacies involved in rogue Internet sales are
 24 independent pharmacies.

25 BY MR. STEPHENS:

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1 Q. And you agree that most, if not all,
 2 of the Internet pharmacies operating
 3 domestically between 2005 and 2009 were
 4 independently owned, fair?

5 MS. SINGER: Objection. Scope.
 6 Foundation.

7 MR. BENNETT: Objection. Scope.
 8 Calls for speculation.

9 THE WITNESS: I'm not sure. I can
 10 tell you the vast majority were independent
 11 pharmacies, but I just -- I just don't remember
 12 if there was a chain involved in one of the
 13 Internet cases or not.

14 MR. STEPHENS: If we could mark this
 15 as the next in order, Bonnie.

16 (Deposition Exhibit 11 was marked
 17 for identification.)

18 BY MR. STEPHENS:

19 Q. Mr. Rannazzisi, I'm going to direct
 20 you to Page 2006.

21 MR. STEPHENS: And for the record,
 22 what has been marked as Deposition Exhibit No.
 23 11 is hearing testimony from March 1, 2012,
 24 entitled: "Prescription Drug Diversion:
 25 Combating the Scourge, a hearing before the

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1 Subcommittee of Commerce, Manufacturing and
 2 Trade, the Committee on Energy and Commerce."

3 BY MR. STEPHENS:

4 Q. And I would direct your attention to
 5 Page 206.

6 Mr. Rannazzisi, I am directing your
 7 attention to Question 10 and the last sentence
 8 of the first paragraph of the response.

9 A. The paragraph that starts: "As
 10 previously stated?"

11 Q. No, it's two sentences just up above
 12 it. I will read it for the record. Mr.
 13 Rannazzisi, take your time reading it.

14 The sentences state: "For example,
 15 between 2005 and 2009, many DEA diversion
 16 investigations were initiated against rogue
 17 Internet pharmacies. The results of those
 18 investigations revealed that most, if not all,
 19 of the domestic-based Internet pharmacies were
 20 independently-owned pharmacies."

21 Do you see that?

22 A. Yes.

23 Q. My question, sir, is: You provided
 24 on behalf of the Drug Enforcement
 25 Administration a response back to Congress

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1 which indicated that the results of DEA's
 2 diversion investigations of rogue Internet
 3 pharmacies revealed that most, if not all, of
 4 the domestic-based Internet pharmacies were
 5 independently owned, true?

6 A. Yes, with the qualification that
 7 most, if not all.

8 Q. Correct. Now Walmart, CVS, Rite
 9 Aid, Walgreens, HBC Giant Eagle are all chain
 10 pharmacies, correct?

11 MS. SINGER: Objection. Scope.

12 THE WITNESS: Yes, that's correct.

13 BY MR. STEPHENS:

14 Q. Okay. Mr. Rannazzisi, you mentioned
 15 in some of your prior testimony with me after
 16 lunch, the Ryan Hate Act in 2008, right?

17 A. Yes.

18 Q. And the Ryan Hate Act was
 19 legislation that was focused on trying to help
 20 combat rogue Internet pharmacies, fair?

21 A. Yes.

22 Q. And after the passage of the act, I
 23 believe you mentioned DEA got traction in --
 24 from the investigation enforcement actions
 25 against rogue Internet pharmacies and then

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1 rogue pain clinics began to become more of an
 2 issue and you started to increase
 3 investigations into rogue pain clinics?

4 MS. SINGER: Objection. Compound
 5 question.

6 MR. BENNETT: Objection.
 7 Mischaracterizes testimony.

8 MR. UTTER: Go ahead.

9 THE WITNESS: We -- once the rogue
 10 Internet pharmacy -- the domestic brick and
 11 mortar pharmacies involved in those were shut
 12 down, we started moving resources towards the
 13 rogue pain clinics.

14 BY MR. STEPHENS:

15 Q. Okay. Would you agree that not
 16 every pain clinic was a rogue pain clinic?

17 MR. BENNETT: Objection. Vague.

18 THE WITNESS: I would agree that
 19 there are pain clinics out there that are truly
 20 pain clinics, yes.

21 BY MR. STEPHENS:

22 Q. And just for our terminology, Mr.
 23 Rannazzisi, when you use the word "rogue," like
 24 a rogue pain clinic or a rogue Internet
 25 pharmacy, you are communicating that that is an

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1 Internet pharmacy or pain clinic that you think
 2 is diverting; is that fair?

3 A. They are operating illegally.

4 Q. Now, the rogue pain clinics or some
 5 of the rogue pain clinics in the 2008, 2009
 6 era, both prescribe and supply oxycodone to
 7 their patients at the rogue pain clinic?

8 MR. BENNETT: Objection. Vague.

9 THE WITNESS: Some of them did, yes.

10 BY MR. STEPHENS:

11 Q. And as to those, they were not
 12 sending patients to a pharmacy to fill a
 13 prescription. They were doing the supplying
 14 right there at the pain clinic, correct?

15 MS. SINGER: Objection. Vague.

16 MR. BENNETT: Same.

17 THE WITNESS: In some cases, the
 18 clinics were dispensing medication, yes.

19 BY MR. STEPHENS:

20 Q. All right. And in response to that,
 21 some states passed legislation to require that
 22 the prescriptions of controlled substances be
 23 filled at a pharmacy, not at a pain clinic?

24 MS. SINGER: Objection. Foundation.
 25 Beyond the scope of this witness's expertise.

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1 MR. BENNETT: I will join both as
 2 objection to foundation and scope.

3 MR. UTTER: Same objections.

4 Go ahead.

5 THE WITNESS: I don't know about all
 6 states, but for instance, Florida did pass two
 7 pieces of legislation. First, the 72 hour rule
 8 and then they completely eliminated the
 9 dispensing of any controlled substance.

10 BY MR. STEPHENS:

11 Q. Okay. And then in response to that
 12 legislation, some of the operators of these
 13 rogue pain clinics opened up straw pharmacies
 14 that were actually controlled by the rogue pain
 15 clinic?

16 MS. SINGER: Objection. Compound
 17 question again. Beyond the scope of this
 18 witness's expertise as a response.

19 MR. BENNETT: Objection. Scope.
 20 Objection. Vague.

21 THE WITNESS: We -- there were
 22 instances where rogue clinics purchased
 23 pharmacies and started dispensing
 24 prescriptions, and then having the pharmacists
 25 dispense the medication.

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1 BY MR. STEPHENS:

2 Q. Mr. Rannazzisi, have you ever used
 3 the term or are you familiar with the term, "a
 4 straw purchase?"

5 A. Yes.

6 Q. Okay. Can you please describe what
 7 a straw purchase of a pharmacy would be in this
 8 scenario?

9 A. The owner of the clinic would
 10 basically pay money for an individual to act as
 11 the purchaser of the pharmacy so it doesn't
 12 draw attention to the clinic, so you would have
 13 -- we got to see all different types of people
 14 in Florida that were trying to apply for
 15 pharmacy licenses at that point in time, that
 16 were not medical -- didn't have a background in
 17 medicine.

18 Q. Okay. And some of these straw
 19 pharmacies did get licensed and registered for
 20 a period of time by DEA, correct?

21 A. We started a program where we
 22 actually interviewed and reviewed all the
 23 applicants and the vast majority of the
 24 applicants, once they realized -- once we
 25 started asking questions, they withdrew their

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1 application.

2 Q. Okay. To your recollection,

3 Mr. Rannazzisi, did any straw pharmacy actually

4 get opened and -- such that it was able to

5 dispense prescription controlled substances for

6 a period of time?

7 MS. SINGER: Objection. Compound

8 question.

9 MR. BENNETT: Objection. Scope.

10 You are not authorized to disclose

11 any information regarding any specific

12 nonpublic DEA investigations or activities. To

13 the extent that you can answer this question

14 with publicly available information, you may.

15 THE WITNESS: I -- I don't recall

16 any that got through the system.

17 MR. STEPHENS: Are you okay if we

18 take a break right now?

19 MR. BENNETT: That would be fine.

20 MR. STEPHENS: Yes.

21 MR. BENNETT: 10 minutes?

22 MR. STEPHENS: Yeah. 10.

23 THE VIDEOGRAPHER: We are going off

24 the record.

25 This is the end of Media Unit No. 4.

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1 The time is 1:59.

2 (A short recess was taken.)

3 THE VIDEOGRAPHER: We are going back

4 on the record.

5 This is the start of the Media Unit

6 No. 5.

7 The time is 2:15.

8 You may proceed, Counsel.

9 EXAMINATION BY COUNSEL FOR CARDINAL HEALTH

10 BY MS. MAINIGI:

11 Q. Good afternoon, Mr. Rannazzisi.

12 My name is Enu Mainigi. And I

13 represent Cardinal Health. And I'll be asking

14 you some additional questions this afternoon on

15 behalf of the distributors.

16 Mr. Rannazzisi, you joined the DEA

17 back in about 1986; is that right?

18 A. Yes.

19 Q. And you started as a diversion

20 investigator; is that correct?

21 A. Yes.

22 Q. How long did you remain a diversion

23 investigator?

24 A. From 1986 to 1988.

25 Q. And did you go through training as a

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1 diversion investigator?

2 A. Yes.

3 Q. That was in 1986?

4 A. Yes.

5 Q. And who conducted your training?

6 A. The diversion training unit at

7 Quantico, Virginia.

8 Q. Was Michael Mapes conducting the

9 training at that point in time?

10 A. Michael Mapes was a class

11 coordinator.

12 Q. And so did you take any training

13 from Mr. Mapes?

14 A. I don't remember if Mr. Mapes taught

15 or if he was just coordinating the class. They

16 had instructors, and they had class

17 coordinators. I don't recall if Mr. Mapes was

18 actually instructing at that time or if he was

19 just the class coordinator.

20 Q. Then after you were a diversion

21 investigator, you became a special agent; is

22 that correct?

23 A. Yes.

24 Q. And you continued to work in -- and

25 a special agent works essentially on the law

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1 enforcement side of the DEA; is that right?

2 MS. SINGER: Objection. Vague.

3 THE WITNESS: Special agents have

4 full arrest powers, authority to carry a firm.

5 They work all sorts -- they -- they work all

6 criminal investigations related to Title 21.

7 BY MS. MAINIGI:

8 Q. But the special agents focus on

9 criminal investigations, correct?

10 A. Yes.

11 Q. And did you remain a special agent

12 -- well, let me retract that.

13 Did you remain on the law

14 enforcement side of the DEA until you went to

15 headquarters at the end of 2005?

16 MR. BENNETT: Objection. Vague.

17 MR. UTTER: Go ahead.

18 THE WITNESS: I remain on the law

19 enforcement side. I'm not -- I'm not sure what

20 you mean by that.

21 BY MS. MAINIGI:

22 Q. Let me -- let me rephrase.

23 Did you continue to focus on

24 criminal investigations until you arrived at

25 headquarters for your new role at the end of

Page 229

1 2005?

2 A. I arrived to headquarters in 2004.

3 And for a brief period of time in 2004, I was

4 in the Office of Diversion Control.

5 Q. Okay. So let's just -- let's take

6 that in bite-size pieces.

7 So from 1988 to 2004, you focused

8 primarily on criminal investigations, correct?

9 A. Yes.

10 Q. And from that -- in that time

11 period, 1988 to 2004, you did not regularly

12 interact with wholesale distributors; is that

13 right?

14 MR. BENNETT: Objection. Vague.

15 THE WITNESS: Yes. That's correct.

16 BY MS. MAINIGI:

17 Q. And you didn't perform any sort of

18 regulatory inspections of distribution centers,

19 correct?

20 MS. SINGER: Objection. Vague.

21 THE WITNESS: That -- that's

22 correct.

23 BY MS. MAINIGI:

24 Q. And you didn't provide guidance on

25 suspicious order reporting in that time from

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1 1988 to 2004, correct?

2 A. That's correct.

3 Q. You didn't review excessive purchase

4 reports in that time period of 1988 to 2004,

5 correct?

6 MR. BENNETT: Objection. Vague.

7 THE WITNESS: I'm excessive purchase

8 reports. I -- I'm -- I'm sorry.

9 Are you talking about excessive

10 purchase reports or suspicious orders?

11 BY MS. MAINIGI:

12 Q. You didn't review excessive purchase

13 reports in that time period from 1988 to 2004,

14 did you?

15 A. No.

16 Q. Now, you said you arrived in

17 headquarters in 2004, correct?

18 A. Yes.

19 Q. And what was your role in 2004?

20 A. I was the deputy director of the

21 Office of Diversion Control.

22 Q. And you said in 2004 you were in

23 diversion control briefly.

24 What was the time period,

25 approximately?

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1 A. I think I arrived in -- in March or

2 April of '04, and I departed in August of '04.

3 Q. And where did you depart to?

4 A. I was -- I took over as the deputy

5 chief of enforcement operations. So I ran all

6 enforcement operations during that time.

7 Q. And so, from August 2004 to the time

8 you returned to the department of antidiversion

9 at the end of 2005, you were in enforcement?

10 A. I was in enforce --

11 MS. SINGER: Objection. Vague.

12 MR. BENNETT: Objection. Form.

13 THE WITNESS: I was in enforcement,

14 but I also had a pharmaceutical -- a deployable

15 pharmaceutical section under my control.

16 BY MS. MAINIGI:

17 Q. And what did that pharmaceutical

18 section do? What was its role?

19 A. To assist the field in diversion

20 investigations. And they were also deployable.

21 They could be deployed out to actually help

22 or -- or initiate investigations in --

23 Q. And --

24 A. -- the field.

25 Q. I'm sorry.

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1 A. In the field.

2 Q. The move that you made in August,

3 was that a promotion?

4 A. They -- they needed -- they needed

5 somebody to help out enforcement operations.

6 So they just decided I was the one.

7 THE REPORTER: I'm sorry. They

8 decided...

9 THE WITNESS: They decided I was the

10 one. Because I have a very -- my background is

11 in all different types of enforce. And they

12 needed somebody who had a wide range of

13 background.

14 BY MS. MAINIGI:

15 Q. So while you were in diversion

16 control for several months in 2004, what --

17 what were your responsibilities primarily?

18 A. I would assist the deputy assistant

19 administrator in day-to-day functions,

20 meetings, review documents, ensure that -- help

21 him understand where the cases were going, you

22 know, what cases were out there. Just

23 general -- I was just his deputy. So I -- I

24 did pretty much whatever he couldn't do or

25 didn't -- you know, delegated down to me.

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1 Q. And the deputy administrator at that
2 point in time was who?

3 A. William Walker.

4 Q. Then in late 2005 you became the
5 acting deputy assistant administrator of the
6 Office of Diversion and Control, right?

7 A. In -- in July or August of 2005, I
8 was asked to do both jobs. I was asked to run
9 diversion control. Because Mr. Walker had been
10 deployed, the military. So I was asked to
11 handle both enforcement operations and oversee
12 diversion control as well.

13 Q. And it's in that role as deputy
14 assistant administrator, beginning in that end
15 of 2005, beginning of 2006 time period, that
16 you been to testify in front of Congress; is
17 that right?

18 A. No. I started testifying in front
19 of Congress in 2004.

20 Q. In the -- the first time you were in
21 antidi diversion?

22 A. Yes.

23 Q. In that 2005, 2006 time period, I
24 think as we've -- we've discussed some already
25 with the prior questioners, you had some

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1 testimony in front of Congress on the problem
2 of Internet pharmacies; is that right?

3 A. Yes.

4 Q. And I think you testified with the
5 prior questioner about the evolution that
6 occurred first for the Internet pharmacies and
7 then the switch over to pain clinics, correct?

8 MR. BENNETT: Objection. Misstates
9 testimony.

10 MR. UTTER: Same objection. Go
11 ahead.

12 THE WITNESS: I testified that, you
13 know, we had an Internet pharmacy problem. And
14 once the Ryan Haight Act was passed, the -- the
15 problem shifted. Because most of the
16 brick-and-mortars, if not all of the
17 brick-and-mortars, were shut down.

18 And at that point in time, the
19 problem shifted to pain clinics, rogue pain
20 clinics, rogue doctors and pharmacists.

21 BY MS. MAINIGI:

22 Q. When would you pinpoint the issue of
23 Internet pharmacies really became a problem
24 known to the DEA, approximately?

25 MR. BENNETT: Objection. Scope.

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1 Objection. Foundation.

2 THE WITNESS: Probably before I got
3 to headquarters in 2004. I'm guessing that it
4 was sometime between the end of 2003 and early
5 2004. I was getting briefings before I
6 arrived, phone briefings. So I think that's
7 the first time that we -- we discussed Internet
8 pharmacies.

9 BY MS. MAINIGI:

10 Q. And the phone brief -- briefing that
11 you were getting, were those for your new job
12 in antidi diversion, or were they in relation to
13 your role in -- as -- as a special agent?

14 A. Well --

15 MS. SINGER: Objection. Scope.

16 THE WITNESS: They were preparing me
17 for the deputy director job, which was the
18 number two job in the Office of Diversion
19 Control. So I was briefed on a number of -- a
20 number of issues related to the Office of
21 Diversion Control. And I seem to remember that
22 one of the issues was the Internet pharmacies.

23 BY MS. MAINIGI:

24 Q. At some point in time in the 2005
25 time period, the E-commerce section of

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1 antidi diversion began developing a PowerPoint or
2 a deck related to Internet pharmacies to share
3 with distributors, correct?

4 MR. BENNETT: Objection.

5 Foundation.

6 MS. SINGER: Objection.

7 THE WITNESS: I don't know exactly
8 when in 2005, but there was a -- a PowerPoint
9 presentation prepared for Internet pharmacies.

10 BY MS. MAINIGI:

11 Q. And it became part of the
12 distributor initiative; is that right?

13 A. It was a PowerPoint that was given
14 in the distributor initiative, yes.

15 Q. And I think that the name of the
16 PowerPoint was the Internet Distributor
17 Initiative.

18 Does that sound right to you?

19 MR. BENNETT: Objection.

20 Foundation.

21 THE WITNESS: I -- I don't -- I
22 don't recall.

23 BY MS. MAINIGI:

24 Q. Do you -- the Internet -- or excuse
25 me.

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1 The distributor initiative concept,
 2 was that a concept that the E-commerce section
 3 of antdiversion came up with?

4 MR. BENNETT: Objection. Scope.

5 You're not authorized to disclose
 6 information that would reveal the internal
 7 deliberative process within the Department of
 8 Justice and DEA. To the extent that you can
 9 answer his question without disclosing the
 10 internal deliberative process, you may answer.

11 THE WITNESS: It was a collaborative
 12 effort between the sections.

13 BY MS. MAINIGI:

14 Q. And which sections; do you recall?

15 MS. SINGER: Objection. Scope.

16 MR. BENNETT: You can answer the
 17 question.

18 THE WITNESS: It was a collaborative
 19 effort between E-commerce, pharmaceutical
 20 investigations, liaison and policy.

21 BY MS. MAINIGI:

22 Q. And E-commerce, at that point in
 23 time, was headed by Michael Mapes?

24 A. Yes.

25 Q. And pharmaceutical investigations

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1 was headed by who?

2 A. I don't recall. I -- I think it was
 3 Betsy Willis.

4 Q. And liaison and policy was headed by
 5 who?

6 A. I don't recall.

7 Q. Is it fair to say that the two
 8 individuals that at least initially developed
 9 and then delivered the distributor initiative
 10 were Michael Mapes and Kyle Wright?

11 MS. SINGER: Objection. Scope.

12 MR. BENNETT: Objection. Scope.

13 Foundation.

14 THE WITNESS: They were the primary
 15 -- they delivered the presentation. And they
 16 coordinated the presentation at the
 17 headquarters level.

18 But there -- if I'm not mistaken,
 19 there were other people that were involved in
 20 those presentations.

21 BY MS. MAINIGI:

22 Q. Were you involved at all in
 23 developing the distributor initiative?

24 A. I reviewed their -- their documents
 25 and what they were doing before they actually

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1 initiated it. But I was not present at the
 2 meetings.

3 Q. So the individual one-on-one
 4 distributor meetings that were held beginning
 5 at the end of 2005, for several years
 6 thereafter you were not present at those
 7 meetings?

8 MS. SINGER: Objection. Foundation.

9 THE WITNESS: No. It was the
 10 E-commerce section, liaison and policy,
 11 pharmaceutical investigations, Office of Chief
 12 Counsel, and at least one exec from my office.

13 BY MS. MAINIGI:

14 Q. And by one exec from your office,
 15 who do you mean?

16 A. What -- I had at that time two or
 17 three executive assistants. So one of them
 18 would be in the -- in the meeting as well.

19 Q. And your executive assistants at
 20 that point in time were who?

21 MR. BENNETT: Objection. Vague as
 22 to time.

23 BY MS. MAINIGI:

24 Q. In 2005 time period.

25 A. It was either Mike Heald or Gary

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1 Boggs.

2 Q. Now, the first of the Internet --
 3 the distributor initiative briefings were
 4 delivered in the fall of 2005.

5 Does that sound right to you?

6 A. I was thinking some time in August
 7 or September, yeah.

8 Q. And you hadn't arrived back at
 9 antdiversion at that point in time, correct?

10 A. I was doing both jobs. I was
 11 bouncing between one building and the other.

12 Q. So you had input into what was being
 13 presented to the distributors as part of the
 14 distributor initiative?

15 MS. SINGER: Objection. Foundation.
 16 Vague.

17 THE WITNESS: I reviewed the
 18 documents. But the -- the presentation was
 19 created again as a collaborative effort with --
 20 with those three units in counsel's office.

21 BY MS. MAINIGI:

22 Q. Do you recall whether a set -- any
 23 set of talking points that the individuals such
 24 as Mr. Mapes and Mr. Wright, who were
 25 delivering the initiative, would work off of

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1 when they had their distributor meetings?
 2 MR. BENNETT: Objection. Vague.
 3 MR. UTTER: Go ahead.
 4 THE WITNESS: I -- I don't recall if
 5 there were talking points. I know they had
 6 a -- a set presentation, PowerPoint
 7 presentation, and individualized sales data for
 8 the particular. But I don't know if there was
 9 a set of talking points, no.

10 BY MS. MAINIGI:

11 Q. And with respect to the
 12 individualized data, was that that they took
 13 the ARCOS data for each distributor that they
 14 were planning to meet with and analyzed that
 15 data for anomalies?

16 MS. SINGER: Objection. Vague.

17 MR. BENNETT: Same objection.

18 THE WITNESS: I believe that's what
 19 they were doing, yes.

20 BY MS. MAINIGI:

21 Q. And so they would go over that data
 22 with the distributor and show the distributor
 23 with the distributor's own data where the DEA
 24 had seen some anomalies that were worthy of
 25 questioning, fair?

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1 MS. SINGER: Objection. Vague. And
 2 foundation.
 3 THE WITNESS: Yes. The -- yes.
 4 That's what they would do.

5 BY MS. MAINIGI:
 6 Q. So fair to say that they primarily
 7 worked off of both the ARCOS data and then the
 8 PowerPoint deck that had been prepared in
 9 delivering the distributor initiatives?

10 A. I don't know if that's all they had.
 11 I -- I don't know because I wasn't there.

12 Q. Okay. To the best of your
 13 knowledge, are you aware of anything else
 14 besides those two items, the PowerPoint deck as
 15 well as the ARCOS data?

16 A. I'm aware of the ARCOS data and the
 17 PowerPoint. But I'm not sure what else they
 18 were using.

19 Q. Now, you sent a letter to at least
 20 distributor registrants in the September 2006
 21 time period, correct?

22 A. I think the letter went to
 23 distributors and manufacturers.

24 Q. And the topic of the letter was
 25 suspicious order reporting and -- and

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1 monitoring, correct?
 2 A. I don't have the letter handy.
 3 Q. What do you recall it generally as
 4 being?
 5 A. It was to inform the -- the
 6 population of distributors and manufacturers
 7 what their obligations were under the
 8 Controlled Substances Act and implementing
 9 regulations.

10 Q. And fair to say that you sent
 11 essentially the same letter out again in
 12 February 2007?

13 A. Yes.

14 Q. And was that because there was a
 15 part of the population that didn't receive the
 16 letter?

17 What was the reason for sending the
 18 letter out again?

19 A. I don't recall exactly. But I think
 20 that it was just to ensure that everyone
 21 received the letter. I don't know if they had
 22 information that some people didn't get it.
 23 But I think they just decided they were just
 24 going to resend it again to ensure that
 25 everybody had it.

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1 Q. Now, who -- did you draft the
 2 letter, or did someone help you draft letter?

3 A. It was drafted by several people.

4 Q. Do you recall who?

5 MS. SINGER: Objection.

6 MR. BENNETT: Objection. Scope.

7 You're not authorized to disclose
 8 the infernal deliberative process within the
 9 United States Department of Justice or DEA. To
 10 the extent that you can answer the question as
 11 far as who without disclosing the internal
 12 deliberative process, you may answer.

13 THE WITNESS: I -- I don't recall.
 14 I -- I -- it was just a -- a normal letter. It
 15 would be -- go through several people before it
 16 got to me. I would make my corrections. And
 17 it would come back -- go back down.

18 BY MS. MAINIGI:

19 Q. Now, would it surprise you to learn
 20 that Mr. Wright and Mr. Mapes did not get an
 21 opportunity to review that letter before it
 22 went out?

23 MS. SINGER: Objection. Foundation.

24 MR. BENNETT: Objection.

25 Foundation. Objection. Form. Objection.

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1 Scope.

2 MR. UTTER: Same objection.

3 MR. BENNETT: Just foundation and
4 form.

5 MR. UTTER: Same objection.

6 Go ahead.

7 THE WITNESS: I -- I -- I don't know
8 if they did or not.

9 BY MS. MAINIGI:

10 Q. Mr. Mapes and Mr. Wright were two of
11 the individuals that were primarily dealing
12 with the distributors at that point in time,
13 correct?14 MS. SINGER: Objection. Foundation.
15 Mischaracterizes the witness's prior testimony.16 MR. BENNETT: And objection. Vague
17 regarding the "dealing with."

18 MR. UTTER: Go ahead.

19 MR. BENNETT: Or objection. Vague.

20 THE WITNESS: I'm -- I'm not sure.
21 Liaison policy was dealing with the
22 distributors as well. And if I'm not mistaken,
23 the regulatory section, pharmaceutical
24 investigations, were also. So I -- I -- and I
25 just -- they were dealing with them, but

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1 several components also were dealing with them.

2 BY MS. MAINIGI:

3 Q. And in liaison and policy, who do
4 you recall was primarily dealing with the
5 distributors, let's say in the '06, '07 time
6 period?7 A. I don't recall. Because liaison
8 policy changed quite a bit. I mean it changed
9 as people rotated in and retired and left. So
10 I just don't recall who was there at the time.11 Q. And you don't to recall -- well,
12 let's broaden the time period.13 In the '05 to let's say '09 time
14 period, do you remember anyone in liaison and
15 policy that was dealing with distributors on a
16 regular basis?

17 MR. BENNETT: Objection. Vague.

18 THE WITNESS: Maybe Mark Caverly.

19 BY MS. MAINIGI:

20 Q. I'm sorry?

21 A. Mark Caverly.

22 Q. Did he attend the distributor
23 initiative meetings?

24 A. I don't know if he did or not.

25 Q. And then in pharmaceutical

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1 investigations, was there any -- I assume, just
2 given the name, there wasn't anyone that was
3 specifically dealing with distributors in that
4 department?5 MR. BENNETT: Objection. Form.
6 Objection. Vague.7 THE WITNESS: I believe they were
8 dealing with distributors. And at that point
9 in time would have been Matt Murphy.

10 BY MS. MAINIGI:

11 Q. And was he part of the distributor
12 initiative briefings?13 A. I believe he did attend those
14 distributor initiative briefings.15 Q. And then the distributor initiative
16 briefings went on, to your recollection, how
17 long?18 They started, as you said, in August
19 2005 and went to what time period?20 A. When I left, they were still going
21 on.

22 Q. In 2016?

23 A. '15.

24 Q. Was there a period of time that they
25 stopped?

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1 A. I don't recall a period of time
2 where they stopped.3 Q. Would it surprise you to learn that
4 other folks have testified that they stopped
5 for a period of time because of concern about
6 litigation?7 MR. BENNETT: Objection. Form.
8 Objection. Misstates testimony. Objection.
9 Foundation.

10 MR. UTTER: Same objection.

11 Go ahead.

12 THE WITNESS: I -- I don't recall if
13 they stopped or not. But lit -- unless we were
14 in litigation with the whole distribution
15 population, I -- I don't think that would have
16 stopped us from meeting the certain
17 distributors.

18 BY MS. MAINIGI:

19 Q. So you think the distributor
20 initiative briefings kept going straight
21 through the 2005 through 2016 time period?22 MS. SINGER: Objection.
23 Mischaracterizes the witness's testimony.

24 MR. BENNETT: Same objection.

25 THE WITNESS: As far --

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1 MR. UTTER: Same -- same objection.
 2 Sorry. Go ahead.

3 THE WITNESS: As far as I recall,
 4 there was no break in the distributor -- now,
 5 they might not have been doing a huge number
 6 during certain time period, but that generally
 7 is because of resources.

8 But I don't recall any time where we
 9 shut down the distributor initiative for a
 10 period of time.

11 BY MS. MAINIGI:

12 Q. And I imagine, with respect to the
 13 distributor initiative, just as the focus of
 14 the DEA evolved from Internet pharmacies to
 15 pain clinics and perhaps on to other issues,
 16 that what was being discussed and shared at the
 17 distributor initiatives also evolved and
 18 changed?

19 MS. SINGER: Objection. Compound
 20 question.

21 MR. BENNETT: Objection. Form.

22 MR. UTTER: Same objection.

23 Go ahead.

24 THE WITNESS: I don't recall. Like
 25 I said, I was not in those -- those briefings.

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1 So I -- I don't know. I would assume, like any
 2 other meeting, that they're going to talk about
 3 trends and changes in trends during the
 4 briefings, just like they do at the distributor
 5 conferences they have.

6 BY MS. MAINIGI:

7 Q. So going back to your letters, you
 8 then sent another letter in December 2007.

9 Do you recall that?

10 A. Yes.

11 Q. And what was the purpose of that
 12 letter relative to the prior two that you had
 13 sent?

14 MR. BENNETT: Objection.

15 Same instruction regarding internal
 16 deliberations. You can answer without
 17 disclosing internal deliberations.

18 THE WITNESS: The letter was sent to
 19 reinforce the previous two letters and also to
 20 make note and to pay attention -- ask them to
 21 pay attention to the Southwood Pharmaceutical
 22 decision that was done in 2007.

23 BY MS. MAINIGI:

24 Q. And what was it that you wanted
 25 attention focused on with respect to Southwood?

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1 A. It was a case regarding a
 2 manufacturer/distributor and we wanted -- the
 3 case outlined what the obligations were and it
 4 was just reinforcing what the obligations that
 5 we had originally talked about in the
 6 distributor initiative and then also in the
 7 first two letters that went out.

8 Q. So coming out of the -- let me
 9 unpackage what you said.

10 Coming out of the distributor
 11 initiatives, at least some times, the attendees
 12 from DEA wrote up a memo of what they
 13 discussed, right?

14 A. No, they always wrote up a memo.

15 Q. Okay. They always wrote up a memo,
 16 and is that a memo you reviewed usually?

17 A. Yes, it would be to me.

18 Q. Okay. But would you review it?

19 A. Of course. I review everything that
 20 comes across my desk.

21 Q. Okay. So those memos, did you find
 22 them to be just a fair and accurate reflection
 23 of how the meeting went as far as you were
 24 aware?

25 MR. BENNETT: Objection.

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1 Foundation.

2 THE WITNESS: Those memos were just
 3 to inform me about the meeting, what was said,
 4 what was talked about and who was there.
 5 That's what the meeting was.

6 BY MS. MAINIGI:

7 Q. If you reviewed the memos and
 8 thought that those delivering the distributor
 9 initiative were not being complete in what they
 10 -- the messages they delivered, would you have
 11 let them know?

12 MS. SINGER: Objection.
 13 Hypothetical. Calls for speculation.

14 MR. BENNETT: Join those objections.

15 MR. UTTER: Go ahead.

16 THE WITNESS: I am just trying to
 17 think of what was in the memos.

18 If I thought that they were missing
 19 something, I would probably add it in at the
 20 time, yeah. I would ask them to include it, or
 21 did you talk about this, and if not, why did
 22 you not talk about it, but most of the time,
 23 they were pretty complete in what they were
 24 doing.

25 BY MS. MAINIGI:

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1 Q. And again, I imagine that the focus
 2 of what was talked about in 2005, 2006 was
 3 different than what the focus was in 2010,
 4 2011, fair?

5 MS. SINGER: Objection. Asked and
 6 answered.

7 MR. BENNETT: Objection. Form.

8 MR. UTTER: Same objections.

9 Go ahead.

10 THE WITNESS: No, because the
 11 regulation never changed, and the whole basis
 12 of the distributor initiative was to, one, make
 13 sure they understand they must maintain
 14 effective controls against diversion under 823
 15 and then under 1301.71 and then -- and 74, and
 16 then also, what a suspicious order is and what
 17 their responsibilities were under suspicious
 18 order monitoring Provision of 1301.74(b).

19 So the regulation in the statute
 20 hasn't changed in over 40 years, so the fact
 21 is, as long as they continued to explain what
 22 their responsibilities are, they were doing
 23 their job.

24 BY MS. MAINIGI:

25 Q. And where I was going, Mr.

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1 Rannazzisi, was -- I imagine that the DEA had a
 2 different way to deal with Internet pharmacies
 3 than they did with pain clinics, for example;
 4 would that be fair?

5 MR. BENNETT: Objection. Form.

6 MR. UTTER: Objection. Form.

7 Vague.

8 Go ahead.

9 THE WITNESS: They are different
 10 types of cases, but it doesn't change what a
 11 suspicious order is and a suspicious order over
 12 the Internet or for a pharmacy that was
 13 facilitating the Internet is pretty much the
 14 same as a suspicious order on a pharmacy that
 15 is ordering its quantity, you know, unusual
 16 order, unusual size, frequency or deviating
 17 substantially from the normal ordering pattern.
 18 That hasn't changed so it's the same concept.

19 You still have to file suspicious
 20 orders regardless of what the method of
 21 diversion is.

22 BY MS. MAINIGI:

23 Q. And so would you -- with DEA in this
 24 distributor initiative, just on a regular basis
 25 meet maybe every few years with the same

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1 distributor and then in that context, just
 2 reinforce what the regulations said?

3 MS. SINGER: Objection. Compound
 4 question. Calls for speculation.

5 MR. BENNETT: Objection. Form.

6 MR. UTTER: Go ahead.

7 THE WITNESS: We were meeting with
 8 distributors that were -- that were not
 9 provided with the initial distributor briefing
 10 all throughout that time period. We also had
 11 conferences where they came in and we would
 12 discuss suspicious orders at the conferences,
 13 and they were all invited to attend whether you
 14 had the initiative distributor initiative
 15 meeting or not. So we were getting the word
 16 out that way as well.

17 BY MS. MAINIGI:

18 Q. So that makes sense to me, but what
 19 -- in terms of -- you said one of the purposes
 20 of the distributor initiative was to understand
 21 what a suspicious order monitoring system was,
 22 for example, right?

23 MS. SINGER: Objection.

24 Mischaracterizes the witness's past testimony.

25 THE WITNESS: I think what I said --

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1 MR. BENNETT: Misstates testimony.

2 MR. UTTER: Same objection.

3 BY MS. MAINIGI:

4 Q. Go ahead. Tell me what you said.
 5 I'm sorry.

6 A. I think what I said was -- to
 7 explain their obligations for suspicious order
 8 monitoring under the regulations.

9 Q. And so beyond providing a
 10 distributor with what the regulation said about
 11 their obligation for suspicious order
 12 monitoring, would you provide, to your
 13 knowledge, any additional information or
 14 elaboration in these distributor initiative
 15 meetings?

16 MR. BENNETT: Objection.

17 Foundation. Vague.

18 THE WITNESS: I am not sure what --
 19 I'm not sure where you are going -- what you
 20 are looking for.

21 They were provided with what a
 22 suspicious order is. They were provided with
 23 examples of suspicious orders. They were
 24 provided with the statute and the regs that
 25 identified what their requirements were under

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1 the act and under the regulations, and they --
 2 that was followed up by three letters that
 3 again reinforced what they were told so, you
 4 know, I think that pretty well covers it.

5 BY MS. MAINIGI:

6 Q. Well, if Mr. -- if Mr. Wright has
 7 testified that he didn't see any of the three
 8 letters before they were sent out, how are you
 9 able to emphasize or reinforce in those three
 10 letters what they -- the distributors had been
 11 told at these meetings?

12 A. Because counsel --

13 MR. BENNETT: Wait. Objection.

14 Foundation. Objection. Form.

15 You can answer.

16 THE WITNESS: Because counsel's
 17 office was in all the distributor meetings and
 18 they also assisted in the drafting of those
 19 minutes.

20 Now, I'm not sure if Mr. Wright saw
 21 those letters or not, but those letters were
 22 drafted, redrafted with the distributor
 23 initiative in mind and the people that were in
 24 that distributor initiative were responsible
 25 for drafting those letters.

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1 BY MS. MAINIGI:

2 Q. From the counsel's office?

3 A. Counsel's office and my staff.

4 Q. So what is a suspicious order?

5 A. Well, according to 1301.74(b), it's
 6 an order of unusual size, frequency or
 7 substantially deviating from the normal
 8 ordering pattern.

9 Q. And so you said one of the things
 10 that were told or -- to the distributors, in
 11 addition to providing them the regulations at
 12 these meetings, you said they were told what a
 13 suspicious order is, right?

14 A. They were.

15 MS. SINGER: Objection. Misstates
 16 the witness's prior testimony.

17 MR. BENNETT: Same objection.

18 MR. UTTER: Same objection.

19 Go ahead.

20 THE WITNESS: They were provided
 21 with the regulation. They discussed the
 22 regulation. They answered questions related to
 23 the regulation, and then they showed specific
 24 examples of what a suspicious order would look
 25 like based on the transactions conducted by

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1 each individual distributor.

2 BY MS. MAINIGI:

3 Q. So to your understanding -- have you
 4 ever described, and I don't need to know any
 5 names, but just generically, have you ever
 6 described to a registrant what a suspicious
 7 order is?

8 A. I have -- I'm sure that I have
 9 spoken to registrants in registrant meetings,
 10 you know, in conferences where I have explained
 11 what a suspicious order is.

12 Q. How do you explain it?

13 A. It's an order of unusual size,
 14 frequency or substantially deviating from the
 15 normal ordering pattern.

16 Q. Those are essentially the exact
 17 words from the regulation, correct?

18 A. Yes.

19 Q. And have you ever provided to a
 20 registrant any elaboration on that definition?

21 A. Definition seems pretty
 22 straightforward.

23 Q. Have registrants asked you for an
 24 elaboration on that definition?

25 A. Yes, and we have explained -- or not

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1 we, the staff has explained to them exactly
 2 what is expected of them. If I am not
 3 mistaken, it was also in Southwood.

4 Q. Okay. So that is what I am trying
 5 to get to.

6 When the staff then or you explained
 7 exactly what is expected, tell me what you said
 8 back then.

9 A. Well, I wouldn't know.

10 MR. BENNETT: Objection.

11 Foundation.

12 You can answer.

13 BY MS. MAINIGI:

14 Q. You wouldn't know?

15 A. I know this is a suspicious order.
 16 I -- what the staff would do is when they'd
 17 come in and say, well, we are confused about
 18 something or I don't understand this, they
 19 would sit down with them and they would say,
 20 okay, explain why and explain what you're
 21 confused about or whatever it is, and then they
 22 would explain what the requirements are under
 23 the regulations. So, you know, again, it's
 24 pretty straightforward regulation, unusual
 25 size, unusual frequency.

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1 Q. So what is an order of unusual size?
 2 A. An order of unusual size is a
 3 pattern, we will say, a pharmacy that has been
 4 ordering 5,000 tablets of Hydrocodone every
 5 month for the last three years and they all of
 6 a sudden bump it up to 20,000, then 50,000,
 7 then a hundred thousand and so on. That's
 8 unusual size.

9 Q. So it's unusual compared to their
 10 past practice?

11 A. Yes. One of the factors.

12 Q. What other factors?

13 MR. BENNETT: Objection. Scope.

14 THE WITNESS: They would be looking
 15 at other pharmacies that they service in that
 16 area, a pharmacy might have an unusually high
 17 purchase of a specific controlled substance in
 18 an area where everybody else was fairly
 19 consistent. That is unusual size as well.

20 Q. Just a large size compared to other
 21 pharmacies in the area?

22 A. Yes.

23 Q. But that large size could perhaps be
 24 explained by nonsuspicious reasons, correct?

25 A. That's due diligence.

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1 Q. Anything else that defined unusual
 2 size in your mind?

3 MR. BENNETT: Objection. Scope.

4 Objection. Incomplete hypothetical.

5 THE WITNESS: I'm sure there are
 6 other things but right now at this current
 7 moment, I don't have them right off the top of
 8 my head.

9 MS. SINGER: Is this a good time to
 10 take a break or sometime soon?

11 BY MS. MAINIGI:

12 Q. Can you keep going for a few more
 13 minutes, Mr. Rannazzisi?

14 A. Yes, about five more minutes.

15 Q. Okay. Let's go a couple more
 16 minutes.

17 What is an order deviating
 18 substantially from a normal pattern?

19 A. A pharmacy --

20 MR. BENNETT: Objection. Scope.

21 You can answer.

22 THE WITNESS: A pharmacy that is
 23 ordering Hydrocodone on a regular basis and all
 24 of a sudden, he starts ordering large
 25 quantities of hydromorphone for no apparent

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1 reason, and there is no documentation why, and
 2 that might exceed the amount of Hydrocodone.
 3 That's -- he never ordered it before and now he
 4 is ordering quantities that are inconsistent
 5 with what he has previously done.

6 BY MS. MAINIGI:

7 Q. That's kind of the same as unusual
 8 size, right?

9 A. No.

10 Q. It's different?

11 MR. BENNETT: Objection.

12 BY MS. MAINIGI:

13 Q. How are those two different?

14 A. Well, it's a pattern. You've
 15 established a pattern of purchasing, and now
 16 all of a sudden, you are inserting a new drug
 17 in that pattern of purchasing. It doesn't have
 18 to be Hydrocodone or hydromorphone. It could
 19 be alprazolam, it could be clonazepam, it could
 20 be diazepam, it could be any pattern that --
 21 anything that is different from your normal
 22 ordering pattern, so if all of a sudden, he
 23 starts -- or the person starts ordering 500
 24 count bottles of alprazolam 2 milligrams, well,
 25 that is not within the normal ordering pattern,

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1 or he's ordering carisoprodol, he never ordered
 2 carisoprodol before, now all of a sudden he is
 3 ordering carisoprodol. That is an ordering
 4 pattern deviation.

5 Q. And the phraseology is deviating
 6 substantially so what -- tell me what
 7 substantially means.

8 MR. BENNETT: Objection. Scope.

9 Objection. Incomplete hypothetical.

10 THE WITNESS: Substantially means
 11 just that. It was -- it is something that
 12 triggers an inquiry because it's not something
 13 that has happened in the past. It is not
 14 something that was done in the past.

15 BY MS. MAINIGI:

16 Q. Okay. And unusual frequency, what
 17 does that mean?

18 MR. BENNETT: Objection. Scope.

19 THE WITNESS: A person orders
 20 Hydrocodone once a week and all of a sudden, he
 21 is ordering it once a day.

22 BY MS. MAINIGI:

23 Q. And doesn't that overlap with order
 24 deviating substantially from a normal pattern?

25 A. No. It's a frequency. It's not a

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1 pattern. A pattern is drugs and types of drugs
 2 they are ordering, a frequency is just that,
 3 the frequency of purchases. Quantity is the
 4 quantity of purchases.

5 Q. Okay.

6 MS. MAINIGI: Should we go ahead and
 7 take a break.

8 THE VIDEOGRAPHER: We are going off
 9 the record. This is the end of Media Unit No.
 10 5. The time is 2:59.

11 (A short recess was taken.)

12 THE VIDEOGRAPHER: We are going back
 13 on the record. This is the start of Media Unit
 14 No. 6. The time is 3:13.

15 You may proceed, Counsel.

16 MS. MAINIGI: Counsel for the
 17 government, I just wanted to address some of
 18 the scope objections that you made, which I do
 19 think are improper.

20 In your authorization letter of
 21 December 10, 2018, you authorize, among other
 22 areas for Mr. Rannazzisi, your personal
 23 recollection of your communications with DEA
 24 registrants about what makes an order
 25 suspicious under 21 C.F.R. Section 1301.74,

1 including the letters you authored in 2006 and
 2 2007, and perhaps also No. 4, which I won't
 3 waste time reading right now.

4 MR. BENNETT: The only response I
 5 would say, and I know we're not to argue on the
 6 record is, you did not ask him what registrants
 7 were told about what makes an order suspicious.

8 You asked him what his personal view
 9 of suspicion was, not what was told, that's why
 10 I believe it was outside the scope, but I'll
 11 still let the witness answer the questions
 12 based on his personal capacity.

13 MS. MAINIGI: Well, these are all in
 14 his personal capacity, right? He is not here
 15 as a 30(b)(6).

16 MR. BENNETT: His personal
 17 knowledge, not his official Department of
 18 Justice information. He is not a 30(b)(6)
 19 witness, but he has been authorized to disclose
 20 official Department of Justice information as a
 21 former employee, just not on what his official
 22 Department of Justice information would be on,
 23 the definition of an item, for example, of
 24 unusual size.

25 However, he is still able to answer

1 that question for you. You did not ask him,
 2 what did you tell registrants about what was an
 3 unusual size which is what would be within No.
 4 3.

5 BY MS. MAINIGI:

6 Q. Well, let's make sure we do both,
 7 Mr. Rannazzisi.

8 You gave me your definition of
 9 unusual size, correct?

10 A. Yes.

11 Q. And I think you also told me earlier
 12 that you don't recall yourself elaborating for
 13 any registrant as you did in this deposition,
 14 what unusual size meant to you, correct?

15 MS. SINGER: Objection. Misstates
 16 prior testimony.

17 MR. BENNETT: I join that objection.

18 MR. UTTER: Same objection.

19 Go ahead.

20 THE WITNESS: I don't -- I haven't
 21 had the opportunity -- well, I have never told
 22 a registrant what their responsibility is as
 23 far as what my definition of a suspicious order
 24 is. That would have come from my staff or the
 25 liaison policy section or the pharmaceutical

1 investigation section or E-commerce, you know,
 2 if they were still there, but it wouldn't have
 3 come from my office directly.

4 BY MS. MAINIGI:

5 Q. And were you ever aware of any
 6 definition that could have been offered by one
 7 of your staff to registrants?

8 A. I wasn't aware of what -- they were
 9 trained, they are trained to follow what the
 10 regulation says, and I'm sure they can give
 11 examples just like I just did, but no, I am not
 12 aware of any specific guidance that they gave.
 13 I mean, we had companies calling in for all
 14 different types of issues, not just related to
 15 suspicious orders. They were trained to give
 16 guidance based on the regs and the Controlled
 17 Substances Act.

18 Q. Companies would call in, though, I
 19 take it, to ask for further elaboration on the
 20 definition of a suspicious order, correct?

21 MS. SINGER: Objection. Foundation.

22 MR. BENNETT: Same objection.

23 THE WITNESS: Companies have called
 24 in to liaison and policy and also to -- back
 25 when E-commerce was E-commerce and other

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1 components and they were provided with
2 guidance.

3 BY MS. MAINIGI:

4 Q. And the guidance they were provided
5 was what, to your understanding?

6 MR. BENNETT: Objection. Vague.

7 THE WITNESS: The guidance they were
8 provided was based on the regulation and they
9 could answer specific questions related to the
10 regulation, specific -- there might be a
11 specific set of facts that they were looking at
12 and they could provide guidance, but generally,
13 the guidance followed the regulation.

14 BY MS. MAINIGI:

15 Q. And by that, you mean they read the
16 regulation to the registrant?

17 A. No.

18 MS. SINGER: Objection. Foundation.

19 THE WITNESS: No. What they did
20 was, they listened to the registrant and then
21 based on what the regulation says, try and help
22 them work through their issue.

23 BY MS. MAINIGI:

24 Q. So a registrant might call and say,
25 I have got an order that meets the following

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1 description. Can you help me figure out
2 whether I should report this as a suspicious
3 order?

4 MS. SINGER: Objection.

5 Hypothetical. Calls for speculation.

6 MR. UTTER: Same objections.

7 Go ahead.

8 THE WITNESS: I don't know, that's
9 never been presented to me before, so I would
10 be -- I would be guessing what the answer was.

11 BY MS. MAINIGI:

12 Q. You are not aware of whether, as the
13 head of the anti-diversion control, that
14 registrants would call seeking elaboration on
15 whether what they had in front of them was a
16 suspicious order or not to be reported?

17 MS. SINGER: Objection.

18 Argumentative.

19 MR. BENNETT: Objection. Asked and
20 answered.

21 THE WITNESS: In my role as the head
22 of the Office of Diversion Control, I have a
23 lot of different things going on at once, and
24 I'm sure that if there was a question that they
25 couldn't answer, they would pop their head into

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1 my office and say this is what came about, what
2 do you think. But no, I don't recall that ever
3 happening before. So they seemed to be able to
4 handle it.

5 BY MS. MAINIGI:

6 Q. You don't know what they might have
7 told a registrant about what defines a
8 suspicious order, correct?

9 MR. BENNETT: Objection.

10 Foundation.

11 MS. SINGER: Objection. Foundation.

12 THE WITNESS: The liaison and policy
13 section, as well as the other sections are
14 trained to provide answers that were in
15 compliance with the regulations in the
16 Controlled Substances Act.

17 BY MS. MAINIGI:

18 Q. So, for example, you gave -- I asked
19 you before we broke whether pattern and
20 frequency, whether those two terms could
21 overlap, that they could encompass the same
22 type of order, correct?

23 A. Yes.

24 Q. And you told me, no, that they are
25 not intended to overlap and you explained to me

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1 why the term pattern and the term frequency
2 were different.

3 Do you recall that?

4 A. Yes.

5 MS. SINGER: Objection. Misstates
6 the witness's prior testimony.

7 THE WITNESS: Again, I explained to
8 you what an unusual size pattern substantially
9 deviating from the norm or -- and frequency,
10 unusual frequency.

11 BY MS. MAINIGI:

12 Q. Do you recall, though, I asked you a
13 question about, could pattern and frequency be
14 the same?

15 A. I don't recall that exact question.

16 Q. Okay. Well, do you recall me
17 walking through what normal pattern meant to
18 you and what unusual frequency meant to you?

19 A. I recall me giving you a definition,
20 my definition of what normal pattern and
21 unusual frequency is.

22 Q. And then do you recall me following
23 -- do you recall me following up and saying,
24 well, couldn't your definition of frequency or
25 unusual frequency be the same as unusual

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1 pattern?

2 A. Again, my answer would be depending
3 on the facts and the suspicious order that had
4 come in, the transaction that had come in, the
5 request for the transaction that had come in.
6 I would have to look at each individual one and
7 see if there is an overlap or not. But I would
8 have to look at the transaction and the
9 request.

10 Q. So sometimes, there could be an
11 overlap between unusual frequency and unusual
12 pattern and sometimes, there wouldn't be; is
13 that right?

14 MS. SINGER: Objection. Misstates
15 the witness's prior testimony.

16 MR. BENNETT: Objection. Incomplete
17 hypothetical. Calls for speculation.

18 MR. UTTER: Same objections.

19 Go ahead.

20 THE WITNESS: Each individual
21 suspicious order, if -- if it rises to a
22 suspicious order, it could meet criteria. But
23 it -- again, it depends on the facts of that
24 order and that transaction, the -- the -- the
25 pharmacy that's making that purchase.

1 But in the end, it's up to the
2 distributor to decide whether they're going to
3 fill the order or not. It's a business
4 decision.

5 BY MS. MAINIGI:

6 Q. It's a business decision as to
7 whether something is a suspicious order as
8 well, correct?

9 A. Yes.

10 Q. And it may be that one business
11 faced with a particular order makes a different
12 decision on the exact same order than another
13 business, correct?

14 MS. SINGER: Objection.

15 Hypothetical. And calls for the witness to
16 speculate.

17 MR. BENNETT: And objection. Scope.

18 THE WITNESS: It depends on the type
19 of due diligence they're doing on their
20 customers; whether they know their customers
21 and what their customers' normal ordering
22 patterns are; where is their customer situated;
23 is the customer close to a hospital; is the
24 customer close to -- is in a rural area.

25 There's so many dynamics that the

1 drug enforcement administration doesn't have.
2 Only the business, the distributor, the
3 registrant has that information.

4 So if you're calling the Drug
5 Enforcement Administration to -- to -- to get
6 an okay to release an order, that's not going
7 happen. Because the Drug Enforcement
8 Administration does not know your customer.
9 You know the customer.

10 BY MS. MAINIGI:

11 Q. Only the business, at that point in
12 time, looking at the information before it as
13 well as its due diligence, can make the
14 business decision about whether something is a
15 suspicious order, correct?

16 MS. SINGER: Objection. Misstates
17 the witness's prior testimony.

18 MR. BENNETT: And objection. Scope.

19 THE WITNESS: Based on the facts of
20 the particular order and the customer, they are
21 required to make a decision on whether to file
22 the suspicious order and not ship or ship.

23 If they ship the order and it's not
24 been deemed to be -- their -- their suspicions
25 have not been resolved, then they're not

1 maintaining effective controls against
2 diversion.

3 BY MS. MAINIGI:

4 Q. How does the DEA then go back after
5 the fact and determine that something was
6 suspicious?

7 MS. SINGER: Objection. Lacks
8 foundation.

9 MR. BENNETT: Objection. Scope.
10 Also objection.

11 You are not authorized to disclose
12 information regarding any specific DEA
13 investigations or activities or any information
14 that would reveal the internal deliberative
15 process of the DEA.

16 To the extent that you can answer
17 the question without disclosing those, you may
18 answer the question.

19 THE WITNESS: I can't. I can't
20 answer it that way.

21 BY MS. MAINIGI:

22 Q. You can't tell me how the DEA would
23 then go back and figure out whether something
24 is suspicious or not?

25 A. It's part of the --

1 MR. BENNETT: I'll say --
 2 THE WITNESS: -- investigative
 3 process.
 4 MR. BENNETT: And I will say same
 5 instruction regarding the scope of your
 6 authorization.
 7 BY MS. MAINIGI:
 8 Q. So let me come back to -- to this --
 9 so you gave me your elaboration and further
 10 definition of some of the terminology in 21
 11 C.F.R. 1301.74, right?
 12 A. Yes.
 13 Q. But your elaboration, your further
 14 definition of unusual size, pattern, frequency,
 15 that's not in the regulation itself, right?
 16 MR. BENNETT: Objection.
 17 THE WITNESS: No.
 18 Oh.
 19 MR. BENNETT: Form.
 20 Go ahead.
 21 THE WITNESS: No, it's not in the
 22 regulation.
 23 BY MS. MAINIGI:
 24 Q. And the elaboration that you
 25 provided me on those terms -- unusual size,

1 pattern, and frequency -- that elaboration is
 2 not in any sort of written guidance, is it, to
 3 your knowledge?
 4 A. With the exception of the three
 5 letters that discussed suspicious order
 6 monitoring and the fact that we sat down with
 7 each individual distributor and talked about
 8 it.
 9 It was discussed in the Southwood
 10 decision. Other than that, no.
 11 Q. Okay. Let's go through those.
 12 A. Okay.
 13 Q. Is it fair to say that the way you
 14 defined or further defined unusual size for me
 15 might be different than the way your deputy at
 16 the time might have defined unusual size to a
 17 registrant?
 18 MS. SINGER: Objection. Calls for
 19 speculation.
 20 MR. BENNETT: Same objection.
 21 MR. UTTER: Objection.
 22 Go ahead.
 23 THE WITNESS: I don't know exactly
 24 what my deputy or any of the other people would
 25 use as an example. I used -- I gave you

1 examples of what my -- my position of what an
 2 unusual size is or an unusual frequency.
 3 Deposition is based on, you know,
 4 my -- my own personal knowledge of how this
 5 works plus other -- plus previous cases that
 6 have been made public.
 7 BY MS. MAINIGI:
 8 Q. Sitting here today, you can't tell
 9 me that your definition of unusual size is the
 10 same as Michael Mapes's definition of unusual
 11 size, right?
 12 MS. SINGER: Objection. Calls for
 13 speculation. Argumentative.
 14 THE WITNESS: I don't know --
 15 MR. BENNETT: Objection. Form.
 16 Objection. Scope.
 17 THE WITNESS: I don't know what Mr.
 18 Mapes's definition of unusual size is. But I'm
 19 pretty sure it's pretty consistent with what my
 20 definition is.
 21 BY MS. MAINIGI:
 22 Q. Have you guys compared notes on
 23 that?
 24 A. No. But based on the previous cases
 25 we've done, it's pretty -- pretty easy to see a

1 pattern of unusual size.
 2 Q. I thought pattern and size were two
 3 different barometers.
 4 A. It -- they are. But what I'm
 5 talking about, unusual size when you have a --
 6 a pharmacy that's been ordering a certain
 7 amount for a long period of time, and then all
 8 of a sudden they bump up their purchases for no
 9 reason.
 10 They haven't changed their area.
 11 They haven't moved near a hospital. And then
 12 they continue to increase without anybody
 13 filing a suspicious order, without anybody
 14 going out and doing due diligence.
 15 Okay. That -- that's -- that's an
 16 unusual size that should be followed up.
 17 Q. And do you think your definition of
 18 unusual size would be the same as Mr. Wright's
 19 definition of unusual size?
 20 A. I don't --
 21 MS. SINGER: Objection. Calls for
 22 speculation.
 23 MR. BENNETT: Objection. Form.
 24 Objection. Scope.
 25 Go ahead.

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1 THE WITNESS: I don't know what Mr.
 2 Wright's definition is on unusual size. But
 3 it's pretty straightforward. Unusual size is
 4 just that, an unusual size.

5 BY MS. MAINIGI:

6 Q. Why did your division never write
 7 down the further elaboration of the terms
 8 "unusual size," "pattern" or "frequency" --

9 MS. SINGER: Objection. Found --

10 BY MS. MAINIGI:

11 Q. -- for distributors?

12 MS. SINGER: Sorry.

13 Objection. Foundation. And
 14 objection. Scope.

15 MR. BENNETT: And I would object
 16 that it misstates prior testimony.

17 And also I would inform the witness
 18 that you are not authorized to disclose the
 19 internal deliberative process of DEA or
 20 information that would disclose nonpublic
 21 recommendations you made or you're aware of
 22 concerning any proposed agency action.

23 To the extent that you can answer
 24 the question without disclosing that, you may
 25 answer.

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1 THE WITNESS: In those limitations,
 2 I can't answer that question.

3 BY MS. MAINIGI:

4 Q. Well, let me ask it this way: Has
 5 DEA provided in written form your explanation
 6 and elaboration of what a suspicious order is
 7 to registrants?

8 A. Not as far as I'm aware. But again,
 9 I gave you an explanation my opinion of what a
 10 suspicious order of unusual size, frequency or
 11 deviating substantially from the normal
 12 ordering pattern. That was an -- examples and
 13 a nonexhaustive list of what, in my opinion,
 14 those are.

15 But in the end, only the distributor
 16 could make a decision about what a suspicious
 17 order of unusual size is.

18 Q. And, in fact, under your leadership,
 19 you felt so strongly, Mr. Rannazzisi, that only
 20 a distributor could decide what an unusual size
 21 was or what a suspicious order was that you
 22 essentially told your department not to provide
 23 explanations and elaborations to registrants,
 24 correct?

25 MS. SINGER: Objection.

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1 Argumentative. Lack of foundation. Compound
 2 question.

3 MR. BENNETT: I join those
 4 objections.

5 And I also indicate that the witness
 6 is not authorized to disclose any nonpublic
 7 recommendations you made or you're aware of
 8 regarding any proposed agency action or reveal
 9 the internal deliberative process within the
 10 Department of Justice or the DEA.

11 MR. UTTER: Go ahead.

12 THE WITNESS: I've --

13 MR. BENNETT: Otherwise you can
 14 answer.

15 THE WITNESS: Yeah. I've never
 16 advised any of my people, while I was the head
 17 of the Office of Diversion Control, not to
 18 elaborate. And that wouldn't come from me
 19 anyway. It could come from counsel's office.

20 BY MS. MAINIGI:

21 Q. And sitting here today, you don't
 22 know, Mr. Rannazzisi, when Mr. Mapes or
 23 Mr. Wright were asked to elaborate on what they
 24 thought a suspicious order was, what they told
 25 order registrants at distributor initiative

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1 meetings, correct?

2 MS. SINGER: Objection. Asked and
 3 answered. Lack of foundation. Calls for
 4 speculation.

5 THE WITNESS: I don't know exactly
 6 what they said. But I know they followed the
 7 regulation, which is unusual size, frequency,
 8 substantially deviating from the normal
 9 ordering pattern.

10 BY MS. MAINIGI:

11 Q. You mentioned the Southwood decision
 12 as being perhaps instructive to the registrant
 13 community about what a suspicious order was,
 14 correct?

15 A. Yes.

16 Q. How was it instructive?

17 A. It explained what the
 18 responsibilities were for suspicious order
 19 monitoring. It explained what the requirements
 20 were to maintain effective controls against
 21 diversion. It explained that, you know, using
 22 an example of a company that actually was
 23 involved in this type of activity, what they
 24 did and what the results of what they did were.

25 Q. Now, Southwood was an Internet

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1 pharmacy?

2 A. Southwood was a manufacturer -- a
3 repackager, I guess they would be, who supplied
4 Internet, among other types of registrants.

5 Q. So they were a supplier to an
6 Internet pharmacy?

7 A. They were a supplier to several
8 different registrant classes.

9 Q. And so what are some of the specific
10 elaborations of what goes into a suspicious
11 order monitoring system that come from
12 Southwood?

13 A. I don't have the decision. And I
14 read that decision a long time ago. But -- but
15 that's why the decision was included in the
16 December of 2007 letter to the registrant.

17 Q. And if I go to the Southwood
18 decision, I -- I would learn more about what
19 the DEA wants to see in the suspicious order
20 monitoring system?

21 A. I think --

22 MS. SINGER: Objection. Calls for
23 speculation.

24 THE WITNESS: I don't --

25 MR. BENNETT: Objection. Form.

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1 Objection. Scope.

2 THE WITNESS: I don't know exactly
3 what you would learn from it. Everybody takes
4 things away from opinions, decisions
5 differently.

6 But it reinforces what we explained
7 to the registrant community in the distributor
8 initiatives and then the two memos before about
9 what their obligations are, what they're
10 supposed to do, and how they could maintain
11 effective controls against diversion.

12 BY MS. MAINIGI:

13 Q. The -- the word "pattern" -- could
14 the word "pattern" mean two different things
15 for two different distributors?

16 MS. SINGER: Objection. Calls for
17 speculation.

18 MR. BENNETT: I join that objection.
19 And objection. Scope.

20 MR. UTTER: Object. Speculation.

21 Go ahead.

22 THE WITNESS: I -- I -- I don't
23 know. I mean it's up to the distributor to
24 decide how he's going to define what a
25 quote/unquote pattern is as compared to an

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1 unusual size or frequency.

2 BY MS. MAINIGI:

3 Q. Let me go -- you -- you also
4 mentioned, in addition to the Southwood
5 decision -- and if -- if we have time today,
6 we'll go ahead and get that decision marked so
7 we can go through it.

8 A. Okay.

9 Q. But you also referenced your
10 letters, right?

11 A. Uh-huh.

12 MS. MAINIGI: Is it attached to
13 the...

14 So let me put in front of you your
15 three letters.

16 THE WITNESS: Okay.

17 MS. MAINIGI: Let me -- let me
18 correct that.

19 I'm going to put in front of you
20 just the September 27, 2006 letter, which I
21 think is nearly identical to the February 2007
22 letter, as you recall.

23 THE WITNESS: Yes. I think you're
24 correct.

25 MS. MAINIGI: And then I'll also put

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1 in front of you the December 27, 2007 letter,
2 Mr. Rannazzisi.

3 THE WITNESS: Okay.

4 MS. MAINIGI: Let's go ahead and get
5 those marked as separate exhibits, please.
6 (Deposition Exhibit 12 was marked
7 for identification.)

8 (Deposition Exhibit 13 was marked
9 for identification.)

10 MS. MAINIGI: Need a break,
11 Mr. Rannazzisi?

12 THE WITNESS: No. I'm fine.

13 MS. MAINIGI: Okay. The September
14 2006 letter is Exhibit 12. And the December
15 2007 letter is Exhibit 13.

16 BY MS. MAINIGI:

17 Q. So, Mr. Rannazzisi, I assume you're
18 still somewhat familiar with these letters,
19 correct?

20 A. For the most part, yes.

21 Q. Did you take a look at these letters
22 as part of your preparation for this
23 deposition?

24 A. Yes. At the department.

25 Q. So I'm not necessarily going to

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1 direct you to any particular area.
 2 What -- what I'd like you to just
 3 direct me to is you indicated that the letters
 4 served as further elaboration of what a
 5 suspicious order is.
 6 And so, if you could point out to me
 7 in each letter where that elaboration is, I'd
 8 be grateful.
 9 MS. SINGER: Objection. Misstates
 10 the witness's prior testimony.
 11 MR. BENNETT: Objection. Form.
 12 MR. UTTER: Go ahead.
 13 THE WITNESS: It -- it -- it --
 14 BY MS. MAINIGI:
 15 Q. Well, let's start --
 16 A. As far as the definition --
 17 Q. Let's -- let's do one at a time.
 18 A. -- suspicious orders include orders
 19 of unusual size, orders deviating substantially
 20 from a normal pattern, and orders of unusual
 21 frequency.
 22 Q. Okay. So we're on Exhibit 12?
 23 A. Yes.
 24 Q. And Exhibit 12 is the September 27,
 25 2006 letter, right?

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1 A. Yes.
 2 Q. And that's identical to the February
 3 2007 letter, as you recall?
 4 A. Yes.
 5 Q. Okay. So we are looking for your
 6 further elaboration of what is a suspicious
 7 order.
 8 Can you direct us to what paragraph
 9 you are at?
 10 MS. SINGER: Again, objection.
 11 Misstates the witness's prior testimony.
 12 MR. BENNETT: Objection to form.
 13 MR. UTTER: Go ahead.
 14 THE WITNESS: Again, it's in the
 15 middle of the page.
 16 BY MS. MAINIGI:
 17 Q. What page?
 18 A. That's the definition.
 19 Page 2.
 20 Q. Page 2. Okay. Middle of the page.
 21 A. Suspicious orders include orders of
 22 unusual size, order deviating substantially
 23 from the normal pattern, and orders of unusual
 24 frequency.
 25 It's pretty straightforward.

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1 Q. Which paragraph were you -- I just
 2 want the make sure I didn't miss it.
 3 A. Right -- right in the middle. One,
 4 two, three -- fourth paragraph in the -- right
 5 after 21 C.F.R. 1301.74.
 6 Q. Oh, the paragraph that's cut and
 7 paste, the regulation itself?
 8 A. The one that basically lists the
 9 regulation and what a suspicious order is.
 10 Q. So besides just repeating what the
 11 regulation says, does the September 27, 2006
 12 letter have any elaboration of what a
 13 suspicious order is?
 14 A. By definition, the regulation
 15 explains what a suspicious order is.
 16 MR. BENNETT: And I will object to
 17 vague.
 18 BY MS. MAINIGI:
 19 Q. So you had indicated to me that the
 20 letters explained further -- just much like
 21 your individual definitions, I thought I
 22 understood you to say that the letters further
 23 elaborated on what a suspicious order was.
 24 MS. SINGER: Objection.
 25 BY MS. MAINIGI:

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1 Q. That's not right?
 2 MS. SINGER: Objection. Misstates
 3 the witness's prior testimony.
 4 THE WITNESS: The -- the letters
 5 reinforce what was in the distributor
 6 initiative briefings. And the letters discuss
 7 what a suspicious order is.
 8 Again, the -- it's just reinforcing
 9 that this is a suspicious order. It's pretty
 10 straightforward: unusual size, frequency, or
 11 deviating substantially from the normal
 12 ordering pattern.
 13 BY MS. MAINIGI:
 14 Q. I found your elaboration of unusual
 15 size to be helpful.
 16 Why not include those types of
 17 elaborations in this letter?
 18 MS. SINGER: Objection. Counsel is
 19 testifying.
 20 MR. BENNETT: Objection. Scope.
 21 You're not authorized to disclose
 22 the internal deliberative process or any
 23 nonpublic recommendations you made or you're
 24 aware of regarding what does or does not go
 25 into the letter.

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1 To the extent that you can answer
 2 counsel question without disclosing that, you
 3 may answer.

4 THE WITNESS: In the distributor
 5 initiative briefings, they were presented with
 6 a pattern which showed unusual size.

7 BY MS. MAINIGI:

8 Q. And the presentation of this pattern
 9 that was in the ARCOS data that was presented?

10 A. Yes.

11 Q. Their own individual ARCOS data?

12 A. The -- the distributor that was
 13 going through the briefing, we used their ARCOS
 14 data.

15 Q. And so a pattern that emerged for
 16 one distributor could have been different than
 17 a pattern that emerged for another distributor,
 18 right?

19 A. I don't know --

20 MS. SINGER: Objection. Calls for
 21 speculation.

22 THE WITNESS: I don't know about
 23 pattern. But we were talking about size at
 24 that moment in time. If I'm not mistaken, the
 25 three initial -- the three initial distributor

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1 briefings, we concentrated on size.

2 There might have been a pattern --
 3 there might have been a couple of pattern
 4 examples as well, but it was mostly size.

5 BY MS. MAINIGI:

6 Q. So the goal was to first show
 7 distributors what unusual size could mean,
 8 correct?

9 A. Because we went into patterns and
 10 showed the -- we -- if I'm -- like I said, I
 11 wasn't in the briefing. But if I remember
 12 correctly on what the briefing material had, it
 13 showed patterns where we actually saw an
 14 Internet pharmacy that was -- in their -- in
 15 their patterns they started purchasing
 16 carisoprodol or Xanax, alprazolam, 1 and 2
 17 milligram tablets, which was not what they did
 18 before.

19 So it established a pattern with
 20 Hydrocodone. And it also showed that the
 21 hydrocodone increases over a period of time.
 22 And that was what was presented -- that's
 23 explained to them this is a suspicious order;
 24 in our opinion, this is what's suspicious.

25 Q. But that suspicion could be

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1 alleviated by some due diligence, right?

2 A. It could be if they were doing due
 3 diligence. But they weren't.

4 Q. And how do you know they weren't
 5 doing due diligence?

6 MR. BENNETT: Objection. Scope.

7 You're not authorized to disclose
 8 information regarding any specific DEA
 9 investigations or activities that are not
 10 public.

11 To the extent that you can answer
 12 generally, or if you can answer with publicly
 13 available information about DEA, activities you
 14 may answer.

15 BY MS. MAINIGI:

16 Q. I'm not looking for specific
 17 distributors.

18 But how can you say across the board
 19 that there was -- you know there was no due
 20 diligence?

21 A. On the --

22 MR. UTTER: Excuse me.

23 Object. That's not what he said.

24 Go ahead.

25 MR. BENNETT: And I would join that

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1 objection. Misstates testimony.

2 THE WITNESS: On the distributor
 3 briefings, we looked at specific unusual size
 4 transactions and patterns. And we explained to
 5 them that these shouldn't -- these were
 6 suspicious, in our -- in -- in -- when we
 7 looked at them, we believed they were
 8 suspicious, and we asked them what they thought
 9 of the transactions, is --

10 BY MS. MAINIGI:

11 Q. And --

12 A. -- how it was explained to me. Yes.

13 Q. I'm sorry.

14 And -- and it's possible that they
 15 may have had a justification, through due
 16 diligence, for having concluded that that
 17 particular order was not suspicious, right?

18 MS. SINGER: Objection. Calls for
 19 speculation.

20 MR. BENNETT: I would join that
 21 objection.

22 MR. UTTER: Same objection.

23 Go ahead.

24 THE WITNESS: If they were doing due
 25 diligence, they wouldn't have shipped those

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1 drugs. But regardless, in one particular
 2 company, the next go-around -- after we
 3 notified them of what suspicious was, they
 4 continued to ship in greater quantity
 5 downstream than before the meeting.

6 BY MS. MAINIGI:

7 Q. You mentioned that -- just tell me
 8 to the best of your recollection.

9 You -- I think I heard two things
 10 from you: that the distributor briefing
 11 initially focused on size, and then I heard you
 12 say they focussed on size and pattern.

13 What's your best memory?

14 A. I believe it was both size and
 15 pattern.

16 Q. Okay. And so you think that
 17 Mr. Mapes, when he did these distributor
 18 briefings, may have elaborated on the
 19 definition of unusual size and unusual pattern?

20 A. He had to --

21 MS. SINGER: Objection.

22 THE WITNESS: -- because.

23 MS. SINGER: -- calls for
 24 speculation.

25 THE WITNESS: The transactions were

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1 based on size and pattern. So yes. And...

2 BY MS. MAINIGI:

3 Q. But you don't know what that
 4 elaboration was?

5 A. No, I don't what that elaboration --

6 Q. And that elaboration could have
 7 varied from distributor --

8 MR. BENNETT: Can you let the
 9 witness finish his answer, please.

10 MS. MAINIGI: I'm sorry.

11 THE WITNESS: I don't --

12 BY MS. MAINIGI:

13 Q. That --

14 MR. BENNETT: Hang on.

15 Let her answer -- are you finished
 16 with your answer to the previous question?

17 THE WITNESS: I'm sorry. Go ahead.

18 MS. MAINIGI: I'm sorry.

19 MR. BENNETT: Okay. Could you
 20 please ask the question now.

21 And wait for her to finish --

22 THE WITNESS: Yes.

23 MR. BENNETT: -- the question before
 24 you answer.

25 THE WITNESS: Okay.

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1 BY MS. MAINIGI:

2 Q. And the elaboration could have
 3 varied from distributor to distributor,
 4 correct?

5 MR. BENNETT: Objection. Calls for
 6 speculation.

7 THE WITNESS: The elaboration was
 8 based on the individual distributor
 9 transactions. So I would guess that it could,
 10 based on the transactions they were using at
 11 the time, yes.

12 Q. Now, for guidance, besides the
 13 C.F.R., what would a distributor turn to that
 14 didn't get their distributor briefing until
 15 2009 or 2010?

16 A. Well, they had the letters. And
 17 they could call in to the local DEA offices;
 18 they could call into the liaison and policy
 19 section; they could call into the
 20 pharmaceutical regulatory section.

21 There was a number of places where
 22 they could call to get their questions
 23 answered.

24 Q. So we've already established the
 25 letter doesn't give a definition of suspicious

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1 order beyond the C.F.R. terminology, right?

2 MR. BENNETT: Objection. Misstates
 3 prior testimony.

4 THE WITNESS: The -- the C.F.R.
 5 test-- the C.F.R. definition is the official
 6 definition of a suspicious order.

7 BY MS. MAINIGI:

8 Q. So how would a local D -- if they
 9 could call a local DEA office, how would a
 10 local DEA office know what to tell them versus
 11 what headquarters is telling them?

12 MS. SINGER: Objection. Calls for
 13 speculation.

14 MR. BENNETT: Objection. Scope.
 15 Calls for speculation.

16 MR. UTTER: Same objection.
 17 Go ahead.

18 THE WITNESS: The diversion
 19 investigators and the headquarters staff are
 20 basically told how to answer certain questions.

21 However, if the -- if the staff in
 22 the field -- the -- the field office
 23 cannot answer the question, is not comfortable
 24 answering the question, they would refer the
 25 question up to liaison and policy. And liaison

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1 and policy would answer the question.

2 BY MS. MAINIGI:

3 Q. So the field offices, you don't
4 really know what they said in terms of defining
5 what an unusual order was, right?

6 MS. SINGER: Objection. Misstates
7 the witness's prior testimony.

8 MR. BENNETT: Objection.

9 Argumentative.

10 THE WITNESS: The field office
11 follows the regulations.

12 BY MS. MAINIGI:

13 Q. Did the field office -- is it fair
14 to say that, after your letters, there were
15 diversion investigators that called
16 headquarters and said they were confused about
17 how to administer or interpret these letters?

18 MS. SINGER: Objection. Lack of
19 foundation.

20 MR. BENNETT: Objection. Scope.

21 You can answer.

22 THE WITNESS: I'm not aware of any
23 calls from the field regarding the letters.

24 BY MS. MAINIGI:

25 Q. The field was not confused about

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1 what these letters meant?

2 MS. SINGER: Objection. Scope.

3 Objection. Asked and answered.

4 THE WITNESS: I -- again, I'm not
5 aware of the field being confused. But I'm
6 pretty sure that, if there was some confusion
7 about the letters, I'd be getting calls from an
8 -- from the assistant special agents in charge,
9 the DPM, or the SACs.

10 And no, those calls never came in.

11 BY MS. MAINIGI:

12 Q. And registrants, were they confused
13 after receiving the letter -- receiving these
14 letters?

15 MS. SINGER: Objection. Vague.

16 Lack of foundation.

17 MR. BENNETT: Objection. Calls for
18 speculation.

19 MR. UTTER: Same objection.

20 Go ahead.

21 THE WITNESS: Again, I don't know.
22 That -- those calls would go into liaison and
23 policy or division -- or the division offices,
24 the DPMs or the pharmaceutical regulatory
25 section.

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1 And I was not -- I'm not aware of
2 any calls that came in saying everybody's
3 confused.

4 BY MS. MAINIGI:

5 Q. Taking a look at Exhibit 13, which
6 is your December 2007 letter, does that letter
7 elaborate on the suspicious orders terminology
8 in any way?

9 MR. BENNETT: Objection. Vague.

10 MR. UTTER: Take your time.

11 THE WITNESS: Well, in the last
12 paragraph it does.

13 BY MS. MAINIGI:

14 Q. Last paragraph on the first page or
15 the second page?

16 A. On the first page.

17 Q. Okay.

18 A. "These criteria are disjunctive and
19 are not all-inclusive. For example, if an
20 order deviates substantially from a pattern --
21 a normal pattern, the size of the order does
22 not matter, and the order should be reported as
23 suspicious. Likewise, a registrant need not
24 wait for a normal pattern to develop over time
25 before determining whether a particular order

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1 is suspicious. The size of an order alone,
2 whether or not it deviates from a normal
3 pattern, is enough to trigger the registrant's
4 responsibility to report the order as
5 suspicious. The determination of whether an
6 order is suspicious depends not only on the
7 ordering patterns or the particular customer
8 but also on the patterns of the registrant's
9 customer base and the patterns throughout the
10 relevant segment of the regulated industry."

11 Q. To your knowledge, had this been
12 sent, this elaboration that is in the December
13 27, 2011 -- 2007 letter, had that been sent to
14 registrants before in writing?

15 A. This was -- this letter was sent
16 December 27. This is the elaboration that was
17 sent in December of 2000 -- of 2007.

18 Q. And was there, to your knowledge, a
19 prior elaboration of this type that had been
20 provided to registrants?

21 Essentially was this the first time
22 that that elaboration was provided in writing?

23 A. I don't believe there were any other
24 writings except for the two letters that were
25 sent before the February and the -- it was the

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1 September and the December letter.

2 Q. And the September and the February
3 letters did not have this elaboration that you
4 just read, right?

5 A. No.

6 Q. Do you know what prompted you to
7 include it here in this December 2007 letter?

8 MR. BENNETT: Objection.

9 MS. SINGER: Objection.

10 MR. BENNETT: Scope.

11 You're not authorized to disclose
12 the internal deliberative process. You are
13 also not allowed to disclose information that
14 would reveal attorney-client privileged
15 communications with internal counsel's office.

16 To the extent that you can answer
17 the question without disclosing that, you may
18 answer.

19 THE WITNESS: I can't answer the
20 question with those limitations.

21 BY MS. MAINIGI:

22 Q. Now, the December 2007 letter
23 references excessive purchase reports, right?

24 A. What -- where are you?

25 Q. Well, for example, in the third

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1 paragraph on the first page.

2 A. Yes.

3 Q. And then again on the second page,
4 second paragraph.

5 Do you see that?

6 A. You said the second paragraph,
7 second page?

8 Q. Right.

9 A. Yes.

10 Q. Now, essentially you were telling
11 registrants in this letter no more excessive
12 purchase reports, right?

13 A. No.

14 MR. BENNETT: Objection.

15 Mischaracterizes the letter. Misstates the
16 letter.

17 THE WITNESS: We -- we never told
18 anybody not to send in excessive purchase
19 reports. What we told them was, "The
20 regulation requires you to file suspicious
21 order reports."

22 And then an excessive purchase
23 report is -- is not found when the -- it's not
24 a -- a report that's timely. It's a report
25 that's done at the end of the month or end of

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1 the week.

2 A suspicious order report is one
3 that is done when discovered. It gives us an
4 opportunity to -- to act on it -- act on that
5 suspicious order fairly quickly.

6 And so all this letter said was,
7 "Look, you could do what you want with the
8 excessive purchases, and we'll gladly accept
9 them. However, it's not a suspicious order
10 reported. Land a suspicious order report is
11 what's controlled by the regulation."

12 BY MS. MAINIGI:

13 Q. You had not made those statements
14 that you just described in your earlier
15 letters, your December 2006 and the February
16 2007 letters, correct?

17 A. No. Well, I -- we discussed
18 suspicious ordering -- suspicious order
19 monitoring and when the -- the suspicious
20 orders report were to be filled. Yes, we did
21 discuss that. We didn't discuss excessive
22 purchase reports.

23 MS. SINGER: So we've been going
24 about another hour. Perhaps we should take
25 another break.

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1 MS. MAINIGI: How long have we been
2 going?

3 THE VIDEOGRAPHER: I can tell you.
4 We started back at 3:13. So we've been going
5 about 43 minutes.

6 MS. MAINIGI: Okay. I think it's
7 just 43 minutes, Linda.

8 BY MS. MAINIGI:

9 Q. So with respect to the difference
10 between the first letter -- first set of
11 letters and the second letter, do you recall
12 there being confusion in the industry about the
13 excessive purchase reports?

14 MS. SINGER: Objection. Calls for
15 speculation. Vague. Foundation.

16 MR. UTTER: Object to speculation.
17 Go ahead.

18 THE WITNESS: I don't know exactly
19 about the confusion in the industry regarding
20 excessive purchase reports. But an excessive
21 purchase report is not a required report under
22 the Code of Federal Regulations or the CSA.

23 And the reason we were sending the
24 letters and did the distributor initiative is
25 to make sure they understood what a suspicious

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1 order report is and when it's to be filed.

2 BY MS. MAINIGI:

3 Q. Now, with respect to suspicious
4 order monitoring systems, your 2006 and 2007
5 letters confirmed that distributors are
6 responsible for coming up with their own
7 suspicious order monitoring systems, correct?

8 A. It's in the regs. That's exactly
9 how it's the written.

10 Q. By the way, did you view your -- any
11 of your letters, your '06 or your '07 letters,
12 as guidance?

13 MS. SINGER: Objection. Calls for a
14 legal conclusion.

15 MR. BENNETT: Objection. Vague.

16 THE WITNESS: I'm not sure where
17 you're go -- it -- guidance as to what?

18 BY MS. MAINIGI:

19 Q. Well, are you familiar with the term
20 "guidance" in the context of the federal
21 government and agencies?

22 MS. SINGER: Objection. Vague.

23 MR. BENNETT: Same objections.

24 THE WITNESS: If -- if you're --
25 those letters were to reinforce what occurred

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1 in the distributor initiative briefings, to
2 reinforce the fact that people -- that entities
3 and registrants must file suspicious orders.
4 That's what those letters were for --

5 BY MS. MAINIGI:

6 Q. What --

7 A. -- and how to file them.

8 Q. I'm sorry. That wasn't my question.
9 You're -- you're a trained attorney,
10 correct?

11 MR. BENNETT: Objection.

12 Argumentative.

13 BY MS. MAINIGI:

14 Q. You're a trained attorney?

15 A. I'm a trained attorney, yes.

16 Q. Do you understand, having held a
17 high-level position at the DEA, in addition to
18 being a trained attorney, what the difference
19 is between a regulation and guidance?

20 MS. SINGER: Objection.

21 Argumentative. Calls for legal conclusion.

22 Outside the scope of this deposition.

23 MR. UTTER: Go ahead.

24 THE WITNESS: A regulation goes
25 through notice and comment. A guidance is put

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1 out by the agency.

2 BY MS. MAINIGI:

3 Q. And so guidance is not law; correct?

4 MS. SINGER: Same objections.

5 THE WITNESS: Well, it is when
6 you're talking about a -- a regulation that's
7 been on the books for 40 years where -- where a
8 value -- where what we're doing is reinforcing
9 that a regulation that's been on the books for
10 40 years needs to be followed and needs to be
11 followed in the manner that the regulation sets
12 up.

13 So all these letters did was say,
14 "This is the regulation. This is the
15 requirement. This is what is expected of you."

16 BY MS. MAINIGI:

17 Q. Well, guidance is not the same as
18 repeating the regulation; guidance is perhaps
19 elaboration on what a regulation means,
20 correct?

21 MR. BENNETT: Objection.

22 MS. SINGER: Objection. Counsel is
23 testifying. Asking for a legal conclusion.

24 MR. BENNETT: Objection. Form.

25 MR. UTTER: Go ahead.

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1 THE WITNESS: I'm not sure -- I'm
2 not sure exactly -- could you ask -- ask that
3 question again.

4 BY MS. MAINIGI:

5 Q. Sure. I can just read back,
6 hopefully, what I said before the objections.
7 Guidance is not the same as the
8 regulation; guidance is an elaboration on what
9 the regulation means, correct?

10 MS. SINGER: Same objection.

11 MR. BENNETT: Same objection.

12 THE WITNESS: I'm not sure if this
13 letter is guidance. Although the letter was
14 sent out to provide the industry with a
15 reinforcement of what was told to them in the
16 initiative briefings, the distributor
17 initiative briefings.

18 BY MS. MAINIGI:

19 Q. And by this --

20 A. So I'm just not sure --

21 MR. BENNETT: Oh.

22 MS. MAINIGI: I'm sorry.

23 MR. BENNETT: Please allow the
24 witness to finish his answer.

25 THE WITNESS: So --

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1 BY MS. MAINIGI:

2 Q. Are you done?

3 A. So I'm just not sure.

4 Q. Okay. And by this letter, just for
 5 clarity of the record, is it fair to say that
 6 you don't know whether the September 2006,
 7 February 2007 and December 2007 letters that
 8 you wrote to the industry or to the registrants
 9 are, in fact, guidance, correct?

10 MR. BENNETT: Objection. Misstates
 11 testimony. Objection. Calls for legal
 12 conclusion.

13 MR. UTTER: Same objection.

14 Go ahead.

15 THE WITNESS: I guess it would be
 16 considered some form of guidance to ensure that
 17 they understand what their obligations are
 18 under C.F.R.

19 BY MS. MAINIGI:

20 Q. So you do think they're guidance.

21 A. They're a --

22 MS. SINGER: Objection.

23 THE WITNESS: -- form of guidance.

24 MS. SINGER: Misstates the witness's
 25 prior testimony.

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1 BY MS. MAINIGI:

2 Q. Are they guidance in the way that I
 3 originally posed the question to you, meaning
 4 you are familiar with the concept of federal
 5 agencies issuing guidance?

6 MS. SINGER: Objection. Compound
 7 question.

8 MR. BENNETT: Objection. Vague.

9 MS. SINGER: Calls for a legal
 10 conclusion.

11 THE WITNESS: Are you talking about
 12 notice and comment?

13 BY MS. MAINIGI:

14 Q. Does guidance go through notice and
 15 comment?

16 A. Rulemaking regulations go through
 17 notice and comment.

18 Q. Guidance doesn't go through notice
 19 and comment, right?

20 A. No.

21 Q. And, in fact, was it around this
 22 time that President Bush issued an executive
 23 order that essentially stated that guidance is
 24 not the same as law?

25 MS. SINGER: Objection. Foundation.

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1 Calls for a legal conclusion. Scope.

2 MR. BENNETT: I join those
 3 objections.

4 MR. UTTER: Same objections.

5 Go ahead.

6 THE WITNESS: I don't know about
 7 that particular -- I don't know about what
 8 President Bush put out, but I can tell you that
 9 there is nothing in these documents that
 10 changes what the regulation and the statute
 11 said, so if there is nothing in the document
 12 that changes what the regulation and the
 13 statute is, then, you know, it's just a letter
 14 informing the registrant community of what
 15 their obligations are.

16 BY MS. MAINIGI:

17 Q. With respect to coming back to
 18 suspicious order monitoring systems, it was the
 19 obligation of the registrant to essentially
 20 come up with their own suspicious order
 21 monitoring system, correct?

22 A. Yes, to design and operate the
 23 system.

24 Q. And there was not any sort of
 25 guidance or checklist that were provided by DEA

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1 to registrants as to what was required to be in
 2 a suspicious order monitoring system, correct?

3 MS. SINGER: Objection. Vague.

4 THE WITNESS: The regulation stands
 5 on its own. I believe the regulation says, the
 6 registrant shall design and operate a system
 7 that identifies and reports suspicious orders.

8 Again, it's a business decision
 9 based on what the registrant's needs are and
 10 the Drug Enforcement Administration does not
 11 tell a registrant what that specific system
 12 should look like.

13 MR. BENNETT: Counsel, we -- it is
 14 after 4:00 and I know we are planning on ending
 15 right around 5. Would this be an appropriate
 16 time to take our last break for the day?

17 MS. MAINIGI: Sure. We can take a
 18 break.

19 THE VIDEOGRAPHER: We are going off
 20 the record. This is the end of Media Unit No.
 21 6. The time is 4:05.

22 (A short recess was taken.)

23 THE VIDEOGRAPHER: We are going back
 24 on the record. This is the start of Media Unit
 25 No. 7. The time is 4:18.

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1 You may proceed, Counsel.

2 BY MS. MAINIGI:

3 Q. Mr. Rannazzisi, I am just looking
4 for a yes or no on the following question:
5 Does DEA have internal guidance as to what is a
6 suspicious order?

7 MR. BENNETT: Objection. Scope.

8 You can answer the question yes or
9 no only.

10 THE WITNESS: No.

11 BY MS. MAINIGI:

12 Q. And for clarity, let me focus you on
13 time periods with that same question.

14 Let's say from the 2005 through the
15 time you left DEA in 2016, that is the time
16 period, in that time period of 2005 to 2016,
17 yes or no, did DEA have internal guidance as to
18 what constitutes a suspicious order?

19 MR. BENNETT: Objection. Scope.

20 You can answer that question yes or
21 no only.

22 THE WITNESS: No.

23 BY MS. MAINIGI:

24 Q. In the time period 2005 to 2016, yes
25 or no, did DEA have internal guidance as to

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1 what constituted a suspicious order monitoring
2 system that complied with regulations?

3 MR. BENNETT: Objection. Scope.

4 You can answer that question yes or
5 no only.

6 THE WITNESS: I don't know about
7 2016, but for 2005 to 2015, no.

8 BY MS. MAINIGI:

9 Q. DEA expected registrants to update
10 their suspicious order monitoring systems to
11 adopt to changing environments, correct?

12 MR. BENNETT: Objection. Scope.

13 Objection. Vague.

14 MR. UTTER: Go ahead.

15 THE WITNESS: DEA expected the
16 registrant, the distributor registrants and the
17 manufacturing registrants to design and operate
18 a system that will identify and report
19 suspicious orders.

20 BY MS. MAINIGI:

21 Q. And did DEA expect that a registrant
22 would update their suspicious order monitoring
23 system to adopt to a changing environment?

24 MS. SINGER: Objection. Vague.

25 MR. BENNETT: Objection. Vague.

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1 Objection. Scope.

2 MR. UTTER: Objection. Asked and
3 answered.

4 You can answer again.

5 THE WITNESS: Again, the answer is
6 that we expect them to design and operate a
7 system that identifies suspicious orders.

8 BY MS. MAINIGI:

9 Q. Would a system that identifies
10 suspicious orders in 2002, in your mind, be an
11 acceptable system in 2010?

12 MS. SINGER: Objection. Calls for
13 speculation.

14 MR. BENNETT: Objection. Calls for
15 speculation. Incomplete hypothetical and
16 scope.

17 MR. UTTER: Go ahead.

18 THE WITNESS: I don't know because I
19 didn't -- I have never reviewed a 2002
20 suspicious order monitoring system in 2002 or
21 2015. I mean, I don't know. I expect that
22 they will design and operate a system that
23 reports, identifies and reports suspicious
24 orders.

25 BY MS. MAINIGI:

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1 Q. So you, yourself, have never even
2 inspected a suspicious order monitoring system,
3 fair?

4 MR. BENNETT: Objection. Misstates
5 testimony. Objection. Scope.

6 THE WITNESS: I have never gone on
7 site and reviewed a suspicious order monitoring
8 system, no.

9 BY MS. MAINIGI:

10 Q. Have you ever viewed one on paper?

11 MR. SMITH: Objection. Scope.

12 THE WITNESS: I may have looked
13 years ago at the framework of a suspicious
14 order monitoring system on paper.

15 BY MS. MAINIGI:

16 Q. Do you have an understanding of what
17 would separate an acceptable compliance
18 suspicious order monitoring system from one
19 that was not compliant with regulations?

20 MS. SINGER: Objection. Vague.

21 Foundation. Scope.

22 MR. BENNETT: Join the scope
23 objection.

24 MR. UTTER: Go ahead.

25 THE WITNESS: Again, the suspicious

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1 order monitoring system has to -- is designed
 2 by the distributor -- the registrant, and
 3 because it's designed by the registrant, you
 4 know, it's their system to design. So I -- you
 5 know, again, I'm not sure -- it's their system
 6 to design under the regs.

7 BY MS. MAINIGI:

8 Q. So how does a registrant know that
 9 their system is enough that its compliant with
 10 the regulations?

11 MS. SINGER: Objection. Calls for
 12 speculation.

13 MR. BENNETT: Objection. Scope.

14 THE WITNESS: Because the regs tell
 15 them that they must design and operate a system
 16 that identifies suspicious orders and they have
 17 to report. How they create that system is a
 18 business decision and as long as it identifies
 19 and reports suspicious orders, then -- and they
 20 are comfortable with that system, then they
 21 have a system.

22 BY MS. MAINIGI:

23 Q. So there is more than one way to
 24 design a compliant suspicious order monitoring
 25 system?

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1 MR. BENNETT: Objection. Scope.

2 MR. UTTER: Asked and answered for
 3 the third time.

4 Go ahead.

5 THE WITNESS: I don't -- I don't
 6 know what the different ways of creating a
 7 system is. Again, I can only go by what the
 8 regulation says and it is up to the registrant
 9 to design and operate a system.

10 BY MS. MAINIGI:

11 Q. Was there any single feature that
 12 made a system compliant?

13 A. Yes, that they identify suspicious
 14 orders or unusual size, frequency or deviating
 15 substantially from a normal ordering pattern.

16 Q. Could two companies have different
 17 suspicious order monitoring systems and they
 18 were both compliant?

19 MS. SINGER: Objection. Calls for
 20 the witness to speculate.

21 MR. BENNETT: Objection. Scope.

22 THE WITNESS: Again, I don't -- I
 23 don't know. It's up to them to decide what
 24 their systems are and without seeing or knowing
 25 about -- knowing about each individual system,

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1 I don't know. I mean, one system could be --
 2 could be identifying suspicious orders and
 3 another might not identify suspicious orders
 4 appropriately.

5 BY MS. MAINIGI:

6 Q. Well, what would you be looking for
 7 between those two systems, Mr. Rannazzisi?

8 A. What the reg says. They have to
 9 identify suspicious orders.

10 Q. So if both systems are identifying
 11 suspicious orders, companies are reporting
 12 suspicious orders, is it possible that two
 13 companies that have employed two different
 14 systems for suspicious order monitoring could
 15 both be compliant?

16 MS. SINGER: Objection. Calls for
 17 speculation. The question has been asked and
 18 answered.

19 MR. BENNETT: Objection. Scope.

20 May I have a continuing objection to
 21 -- based on scope to all your questions about
 22 suspicious order monitoring systems so I don't
 23 have to keep objecting?

24 MS. MAINIGI: No.

25 MR. BENNETT: Objection.

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1 MR. UTTER: Object to speculation.

2 Go ahead.

3 THE WITNESS: Again, without seeing
 4 the systems, is it possible, I'm sure anything
 5 is possible, but in the end, it falls back to
 6 whether the system can identify -- is designed
 7 to identify and report suspicious orders.

8 BY MS. MAINIGI:

9 Q. Well, without naming any company
 10 names, Mr. Rannazzisi, as head of diversion
 11 control for so many years, were you somehow
 12 under the impression that every company had an
 13 identical suspicious order monitoring system?

14 MS. SINGER: Objection. Foundation.
 15 Vague. Scope.

16 MR. BENNETT: I'll join the scope
 17 objection and also objection. Argumentative.

18 MR. UTTER: Go ahead.

19 THE WITNESS: I never really thought
 20 about it. I just knew that they were supposed
 21 to design and operate a system that identifies
 22 suspicious orders. I knew what a suspicious
 23 order was by definition, and I expected that
 24 they would be the ones to create that system.

25 BY MS. MAINIGI:

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1 Q. So it's likely then, while you were
 2 head of diversion control, that there were
 3 companies operating in compliance that had
 4 different suspicious order monitoring systems,
 5 right?

6 MS. SINGER: Objection. Calls for
 7 speculation beyond this witness's experience.

8 MR. BENNETT: Objection. Scope.

9 MR. UTTER: Objection to whether
 10 they were in compliance.

11 But go ahead, you can answer.

12 THE WITNESS: Could you repeat that
 13 one question, please.

14 BY MS. MAINIGI:

15 Q. Sure. So it's likely then, while
 16 you were head of diversion control, that there
 17 were companies operating in compliance that had
 18 different suspicious order monitoring systems,
 19 correct?

20 MS. SINGER: Same objections.

21 MR. UTTER: Same objection.

22 Go ahead.

23 THE WITNESS: In compliance with
 24 what? In compliance with the suspicious order
 25 monitoring reg?

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1 BY MS. MAINIGI:

2 Q. Yes.

3 A. I don't know. Because -- just
 4 because you have a system doesn't mean you are
 5 following your protocols in your system. You
 6 might have the greatest system in the world but
 7 if you are not following your own protocols, if
 8 you are not looking at each individual order
 9 that the system kicks out, doing due diligence,
 10 maintaining effective controls against
 11 diversion, then the system is worthless because
 12 you are not following the protocols that you
 13 established, so I can't say that.

14 Q. So following the protocols that you
 15 established, is that some sort of guidance that
 16 DEA put out to companies?

17 MS. SINGER: Objection. Vague.

18 MR. BENNETT: Objection. Vague.

19 Objection. Scope.

20 THE WITNESS: It would be -- it
 21 would be common sense for a company to
 22 establish protocols and then follow their own
 23 protocols within their suspicious order
 24 monitoring system.

25 BY MS. MAINIGI:

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1 Q. Does the regulations say to do that?
 2 A. I don't think the regulation needs
 3 to say that. That is common sense within your
 4 organization. Why have protocols if you are
 5 not following them.

6 Q. So sitting here today, Mr.
 7 Rannazzisi, you can't tell me what the various
 8 components would be of a successful compliant
 9 suspicious order monitoring system?

10 MS. SINGER: Objection. Misstates
 11 the witness's testimony. Asked and answered.
 12 Scope.

13 MR. BENNETT: Objection. Scope.

14 MR. UTTER: Asked and answered for
 15 about the fourth time.

16 You can go ahead, Mr. Rannazzisi.

17 THE WITNESS: A system that
 18 identifies a suspicious order. So the company
 19 would have to design and operate a system that
 20 identifies a suspicious order which is defined
 21 as an order of unusual size, frequency, or
 22 substantially deviating from normal ordering
 23 pattern, a regulation that has been in place for
 24 over 40 years.

25 BY MS. MAINIGI:

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1 Q. Anything else that would be a key
 2 component of a suspicious order monitoring
 3 system?

4 A. Yes. That the --

5 MR. BENNETT: Objection. Vague.
 6 Objection. Scope.

7 MR. UTTER: Go ahead.

8 THE WITNESS: That the order is
 9 reported when discovered.

10 BY MS. MAINIGI:

11 Q. Anything else?

12 MR. BENNETT: Same objection.

13 MS. SINGER: Objection. Vague.

14 THE WITNESS: Off the top of my head
 15 right now, I can't think of anything else.

16 BY MS. MAINIGI:

17 Q. Okay. Do you recall a time where
 18 the distributor trade association came to you
 19 and your colleagues seeking additional guidance
 20 on reporting suspicious orders and suspicious
 21 order monitoring systems?

22 MS. SINGER: Objection. Vague.
 23 Lack of foundation.

24 THE WITNESS: Do you have a time
 25 period?

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1 BY MS. MAINIGI:
 2 Q. Say, approximately 2010, '11,
 3 thereabouts.
 4 MR. UTTER: Go ahead.
 5 THE WITNESS: Yes. There was a
 6 meeting. I was not present but my staff was
 7 present with counsel.
 8 BY MS. MAINIGI:
 9 Q. And do you recall that the purpose
 10 of the meeting was in part to see if DEA would
 11 provide any additional guidance on either
 12 identification of suspicious orders or what a
 13 compliant suspicious order monitoring system
 14 would look like?
 15 MS. SINGER: Objection to form.
 16 Vague. Outside the witness's scope and
 17 capacity.
 18 MR. BENNETT: Objection.
 19 Foundation.
 20 MR. UTTER: Objection. Speculation.
 21 Go ahead.
 22 THE WITNESS: I was not at the
 23 meeting so I really can't tell you, but I seem
 24 to remember that after that meeting, counsel
 25 and some of the people that worked for me came

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1 back and they explained that --
 2 MR. BENNETT: I'm going to
 3 appropriate and indicate you are not authorized
 4 to disclose things that you discussed with
 5 general counsel or that general counsel advised
 6 you of.
 7 To the extent that you can continue
 8 your answer without disclosing attorney-client
 9 privileged communications, you may continue
 10 your answer.
 11 THE WITNESS: I'm sorry. I can't.
 12 I can't.
 13 BY MS. MAINIGI:
 14 Q. Let me ask it this way: To your
 15 knowledge, did DEA ever answer HDMA's questions
 16 regarding guidance on the definition of a
 17 suspicious order?
 18 MS. SINGER: Objection. Vague and
 19 foundation.
 20 MR. BENNETT: Objection.
 21 Foundation.
 22 MR. UTTER: Go ahead.
 23 THE WITNESS: I'm not sure if there
 24 was a formal request, and I don't know if there
 25 was a formal response for a suspicious order.

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1 BY MS. MAINIGI:
 2 Q. I'm sorry. Is it fair to say that
 3 DEA, in fact, did not provide HDMA in the 2010,
 4 2011 time period with any additional guidance
 5 on identification of a suspicious order?
 6 MS. SINGER: Objection. Asked and
 7 answered.
 8 MR. BENNETT: Objection. Misstates
 9 prior testimony.
 10 MR. UTTER: Object to speculation.
 11 Go ahead.
 12 THE WITNESS: I don't know.
 13 BY MS. MAINIGI:
 14 Q. Sitting here today, do you recall
 15 any that was affirmatively provided?
 16 A. I don't. I just don't recall.
 17 Q. Do you recall any guidance provided
 18 to HDMA about a -- what would make up a
 19 compliant suspicious order monitoring system in
 20 that same time period?
 21 MS. SINGER: Objection. Scope.
 22 MR. UTTER: Go ahead.
 23 THE WITNESS: I don't recall,
 24 generally, HDMA is not a registrant. Those
 25 questions would generally come from the

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1 registrants and the registrants would be
 2 answered. HDMA is an adequacy group, a
 3 lobbying group for the distributors.
 4 BY MS. MAINIGI:
 5 Q. It's made up of registrants, right?
 6 A. Yes.
 7 Q. Are you saying that if a registrant
 8 had a question about the definition of a
 9 suspicious order or what would make up a
 10 compliant suspicious order monitoring system,
 11 that those questions would have been answered
 12 in this time period?
 13 MS. SINGER: Objection. Calls for
 14 speculation. Hypothetical.
 15 MR. UTTER: Objection. Asked and
 16 answered.
 17 Go ahead.
 18 THE WITNESS: What I am saying is
 19 that I don't know if HDMA was answered. I am
 20 sure that when a distributor or a manufacturer
 21 or a pharmacy or a physician calls in with
 22 questions, their questions would be handled and
 23 answered.
 24 BY MS. MAINIGI:
 25 Q. Now, during your tenure, it was

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1 DEA's policy not to approve or endorse a
2 particular registrant's suspicious order
3 monitoring system, correct?
4 MS. SINGER: Objection. Scope.
5 MR. UTTER: You can answer.
6 THE WITNESS: Based on consultation
7 with components within DEA and counsel's
8 office, yes, that's correct. We did not.
9 BY MS. MAINIGI:
10 Q. So if a registrant called and said,
11 here is the five components of my suspicious
12 order monitoring system, does that meet your
13 guidelines, you wouldn't answer that question,
14 right?
15 MS. SINGER: Objection. Calls for
16 speculation.
17 MR. UTTER: Object to the form of
18 the question. There are no guidelines.
19 Go ahead.
20 THE WITNESS: I -- that was
21 something we would -- we would ask other
22 components to -- including counsel's office, to
23 look at.
24 BY MS. MAINIGI:
25 Q. And your counsel is right, there

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were no guidelines, right?

MS. SINGER: Objection.

THE WITNESS: I'm not sure.

BY MS. MAINIGI:

Q. There were not any guidelines on what made up a successful compliant suspicious order monitoring system, correct?

MR. BENNETT: Objection. Vague.

THE WITNESS: There didn't need to be guidelines because that was the whole idea behind the regulation, to operate, design and operate a system to identify and report suspicious orders.

BY MS. MAINIGI:

Q. Now, that regulation came into place in 1971, right?

A. 40-plus years, yes.

Q. Were there opioids in 1971?

MR. BENNETT: Objection. Scope.

Lack of foundation.

You can answer.

MR. UTTER: Go ahead.

THE WITNESS: If you're defining opioids as the semisynthetic or synthetic versions, yes, there were opioids.

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1 BY MS. MAINIGI:

2 Q. There were opioids in 1971?

3 A. Yes.

4 Q. What were they?

5 MR. BENNETT: Objection. Scope.

6 THE WITNESS: Codeine, morphine,
7 hydromorphone, Hydrocodone, but not in the
8 tablet form, opium, Methadone, quite a few.

9 BY MS. MAINIGI:

10 Q. So no need for additional guidelines
11 because the regulation and the wording of the
12 regulation stood the test of time, right?

13 MS. SINGER: Objection. Asked and
14 answered. Argumentative.

15 MR. BENNETT: Objection.
16 Argumentative. Objection. Scope.

17 MR. UTTER: Go ahead.

18 THE WITNESS: Again, the regulation
19 is the regulation. That's what we followed,
20 yes.

21 BY MS. MAINIGI:

22 Q. Was there a point in time either
23 before -- right before your departure or right
24 after your departure, that you understood that
25 there was a movement within DEA to amend the

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1 regulations to provide greater specificity?

2 MS. SINGER: Objection. Lack of
3 foundation.

4 BY MS. MAINIGI:

5 Q. Yes or no.

6 MR. BENNETT: Objection. Scope.

7 You are not authorized to disclose
8 any information that would reveal the internal
9 deliberative process within DEA, information
0 that would reveal nonpublic recommendations you
1 made or you're aware of concerning any proposed
2 agency action.

3 To the extent that you are aware of
4 any public recommendations concerning any
5 proposed agency action, you may answer. To the
6 extent if there is any nonpublic, you may not
7 answer.

8 MR. UTTER: Go ahead.

9 THE WITNESS: I -- no.

0 BY MS. MAINIGI:

1 Q. No, what?

2 A. You asked me if I knew of any
3 movement within DEA to change the suspicious
4 order monitoring regulation and the answer is
5 no.

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1 Q. Okay. Now, in one of your prior
 2 answers, you referenced other components
 3 including counsel's office.

4 Without detailing for me or telling
 5 me at all about any conversations that involved
 6 counsel's office, did you mean by that that if
 7 someone asked, is my suspicious order
 8 monitoring system compliant, that you would
 9 refer them to counsel's office for an answer?

10 MS. SINGER: Objection. Calls for
 11 speculation.

12 MR. BENNETT: Objection. Misstates
 13 testimony.

14 MR. UTTER: Go ahead.

15 THE WITNESS: Counsel's office was
 16 always consulted on matters of suspicious
 17 orders and other matters like that. But again,
 18 when I am talking about other components, you
 19 have an investigative team and pharmaceutical
 20 investigations. You have an investigative
 21 regulatory team and regulatory investigations.
 22 You have liaison and policy, counsel's office,
 23 and the executives that worked in the front
 24 office, so all of them generally had some type
 25 of input.

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1 BY MS. MAINIGI:

2 Q. I don't think that answered my
 3 question.

4 Yes or no, did -- to your knowledge,
 5 did counsel's office or any other components of
 6 DEA approve suspicious order monitoring
 7 systems?

8 A. Nobody approves suspicious order
 9 monitoring systems. I think the letters were
 10 perfectly -- were very clear in the letters
 11 that DEA does not approve a suspicious order
 12 monitoring system.

13 Q. Could one call the counsel's office
 14 and get some sort of indication that particular
 15 components of a suspicious order monitoring
 16 system were compliant with regulations or not
 17 compliant with regulations?

18 MS. SINGER: Objection.

19 MR. BENNETT: Objection. Vague.

20 To the extent that the question
 21 calls for circumstances where DEA executives
 22 and officials would seek advice of counsel,
 23 you're instructed you're not authorized to
 24 answer.

25 To the extent the question calls for

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1 third parties outside of DEA to call counsel's
 2 office, you may answer.

3 MS. SINGER: Again, speculate --
 4 calls for speculation.

5 MR. UTTER: Go ahead.

6 THE WITNESS: So the question is
 7 whether outside individuals could call
 8 counsel's office?

9 BY MS. MAINIGI:

10 Q. Or any other component or department
 11 of DEA and get advice as to particular
 12 components of their suspicious order monitoring
 13 system.

14 MR. BENNETT: Objection. Scope.

15 Not authorized to disclose any
 16 attorney-client privileged communications.

17 To the extent that you can answer
 18 without disclosing attorney-client privileged
 19 communications, you may answer that question.

20 THE WITNESS: Again, there's --
 21 there's at least two components besides --
 22 besides counsel's office that could answer
 23 questions related to suspicious order
 24 monitoring: liaison policy and regulatory
 25 investigations.

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1 BY MS. MAINIGI:

2 Q. To your knowledge, did any of those
 3 departments keep track of the questions that
 4 they were asked?

5 MS. SINGER: Objection. Scope.

6 THE WITNESS: I'm not sure.

7 BY MS. MAINIGI:

8 Q. To your knowledge, did any of those
 9 departments have internal guidance on what they
 10 could or could not say as to suspicious order
 11 monitoring systems?

12 A. The guidance is the regulations. We
 13 don't vary far from the regulations.

14 Q. After the December 27, 2007 letter,
 15 which went to all registrants, did you send any
 16 more letters to registrants related to
 17 suspicious orders or suspicious order
 18 monitoring systems?

19 MR. BENNETT: Objection. Vague.

20 Compound.

21 MR. UTTER: Go ahead.

22 THE WITNESS: I don't believe any
 23 letters went out after that.

24 BY MS. MAINIGI:

25 Q. Was there any communication with the

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1 industry, whether it's distributors,
 2 manufacturers or pharmacies, in 2008, for
 3 example, as to what the DEA was looking for
 4 when it came to suspicious order monitoring and
 5 reporting?

6 MS. SINGER: Objection. Vague.

7 MR. UTTER: You can answer again.

8 THE WITNESS: There were conferences
 9 where we explained suspicious order monitoring.
 10 There were conferences where we explained what
 11 effective controls against diversion was. And
 12 those conferences were attended by
 13 manufacturers and distributors.

14 I think there were -- they -- they
 15 happened every couple of years, every two years
 16 or so.

17 BY MS. MAINIGI:

18 Q. Do you recall when those conferences
 19 took place, meaning specific years?

20 A. No. But I'm sure that, if they
 21 haven't taken it down, it's on the DEA web
 22 site.

23 Q. And you said there would be
 24 explanations of what constituted a suspicious
 25 order at these conferences?

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1 A. They discussed suspicious order
 2 monitoring.

3 Q. And did anyone from DEA memorialize
 4 what DEA said as to what was a suspicious
 5 order?

6 A. I don't know.

7 Q. Did anyone from DEA at these
 8 conferences memorialize what was said as to
 9 what constituted a suspicious order monitoring
 10 system?

11 A. I don't know. I wasn't at those
 12 conferences. So I didn't see the
 13 presentations.

14 Q. Who presented at these conferences
 15 from DEA?

16 A. The same components that were
 17 discussed: regulatory investigations,
 18 E-commerce, liaison and policy, pharmaceutical
 19 investigations.

20 Q. Do you recall ever seeing any report
 21 of what they might have said at these
 22 conferences, those departments?

23 A. I don't recall.

24 Counsel's office presented, too, if
 25 I'm not mistaken.

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1 Q. How do you know that they were told,
 2 for example, "Here's what a suspicious order
 3 looks like"?

4 MS. SINGER: Objection. Misstates
 5 the witness's testimony.

6 MR. UTTER: Same objection.

7 MR. BENNETT: Same objection.

8 THE WITNESS: They discussed
 9 suspicious order monitoring. I don't know if
 10 they discussed this is what it looks like. I
 11 can assume that that's what they discussed.

12 BY MS. MAINIGI:

13 Q. Now, were you aware of a
 14 pharmaceutical industry conference in 2007?

15 A. They -- I believe they did have one
 16 in 2007, yes.

17 Q. And that conference would have
 18 addressed multiple segments of the industry,
 19 right?

20 A. I believe it was distributors and
 21 manufacturers.

22 Q. Okay. And you already said you
 23 didn't attend that conference personally.

24 Okay.

25 Now --

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1 MR. BENNETT: Objection.

2 BY MS. MAINIGI:

3 Q. -- according to the DEA web site --
 4 MR. BENNETT: Objection. I don't
 5 think he answered your question.

6 THE WITNESS: That conference I did
 7 not attend.

8 MS. MAINIGI: Okay. Thank you.
 9 Thank you, Mr. Bennett.

10 BY MS. MAINIGI:

11 Q. According to the DEA web site, I'll
 12 represent to you that web site says that there
 13 was a pharmaceutical industry conference in
 14 2009.

15 Do you recall that conference?

16 MS. SINGER: Objection to
 17 testifying.

18 MR. UTTER: If you know, go ahead.

19 THE WITNESS: I -- I just -- I don't
 20 recall that -- I don't recall what conferences
 21 occurred during those years. I just know that
 22 we've had these conferences. I know they were
 23 scheduled. But I -- I -- I don't recall if
 24 there was a pharmaceutical industry conference
 25 at that point in time, no.

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1 BY MS. MAINIGI:

2 Q. Were you aware of the fact that
 3 there was not a distributor-specific conference
 4 between 2007 and 2013?

5 MS. SINGER: Objection. Foundation.

6 MR. BENNETT: Same objection.

7 MR. UTTER: Same objection.

8 Go ahead.

9 THE WITNESS: We wouldn't do a
 10 distributor-specific conference. Because
 11 manufacturers also have coincident activities
 12 as a distributor, we would always invite them.

13 BY MS. MAINIGI:

14 Q. Are you saying that the 2013
 15 distributor conference was not, in fact, just
 16 for distributors?

17 A. I'm saying that, between the time
 18 period we -- you just talked about, we mixed
 19 the distributors.

20 Now, I'm sure that that distributor
 21 conference had manufacturers as well. Because,
 22 again, a manufacturer has a coincidental
 23 activity of distribution. And because of that,
 24 they are held to the same standards. So they
 25 probably -- I'm almost 99 percent that they

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1 were there as well.

2 Q. Were you aware of the fact that
 3 there's no conference for distributors or
 4 manufacturers between 2009 and 2013?

5 MS. SINGER: Objection. Asked and
 6 answered. Lack of foundation.

7 MR. UTTER: Same objection.

8 MR. BENNETT: Objection. Vague.

9 THE WITNESS: I -- I just don't
 10 know. We had conferences during that time
 11 period. I just don't know what the title of
 12 those conference are or who the attendees were.

13 But I'm pretty sure that we didn't
 14 go that long a period of time without having
 15 some kind of conference that involved
 16 distributors.

17 BY MS. MAINIGI:

18 Q. Well, if the web site doesn't really
 19 reflect any conference between 2009 and 2013,
 20 do you think the web site is wrong?

21 MS. SINGER: Objection. Foundation.

22 THE WITNESS: I don't know.

23 MS. SINGER: Argumentative.

24 MR. BENNETT: Same objection. Also
 25 scope.

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1 MR. UTTER: Same objection.

2 Go ahead.

3 THE WITNESS: I -- I don't know.

4 BY MS. MAINIGI:

5 Q. Do you recall a 2015 GAO report
 6 relating to DEA's communications with
 7 registrants?

8 A. Yes.

9 Q. And do you recall one of GAO's
 10 recommendations was that DEA needed to provide
 11 greater guidance to registrants regarding its
 12 regulations?

13 MS. SINGER: Objection. Form.

14 MR. BENNETT: Objection. Scope.

15 THE WITNESS: I recall that GAO
 16 did -- did an audit of DEA, and they made
 17 recommendations, yes.

18 BY MS. MAINIGI:

19 Q. And do you recall that particular
 20 type of recommendation, that DEA ought to
 21 provide guidance regarding the Controlled
 22 Substances Act and its regulations to
 23 registrants?

24 MS. SINGER: Objection. Foundation.

25 MR. BENNETT: Objection. Scope.

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1 MR. UTTER: Same objection.

2 Go ahead.

3 THE WITNESS: That -- it might have
 4 been. I don't have the report. So I -- I mean
 5 I -- it's been a few years since I read that
 6 report.

7 BY MS. MAINIGI:

8 Q. Well, did you dis -- do you remember
 9 disagreeing with that recommendation?

10 A. Well --

11 MR. UTTER: Well --

12 MS. SINGER: Objection.

13 Argumentative.

14 MR. BENNETT: Objection. Scope.

15 To the extent this would require you
 16 to reveal any nonpublic recommendations you
 17 made or you're aware of or internal
 18 deliberative process of the DEA, you're not
 19 authorized to disclose that.

20 To the extent that there were public
 21 comments regarding the GAO report that you
 22 issued, you may testify regarding your personal
 23 recollection of such comments.

24 MR. UTTER: Objection.

25 Going ahead.

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1 MS. SINGER: Objection. Foundation.
 2 THE WITNESS: That report had some
 3 serious flaws in it. The report was based on
 4 surveys done by manufacturers and distributors
 5 who had just come off of investigations
 6 conducted by DEA.

7 And all of them -- the complaints,
 8 if I remember correctly, were, "DEA was not
 9 communicating with us."

10 Even though DEA sat down with them
 11 in distributor initiative, even though we sent
 12 the letters, even though we had inspectors in
 13 their facilities doing their jobs. But GAO
 14 still felt, based on a survey done by -- in the
 15 industry, that we were not adequately
 16 communicating with them.

17 I remember that. And I remember we
 18 did have responses to each of the GAO
 19 recommendations. But I don't have them here,
 20 and I...

21 BY MS. MAINIGI:

22 Q. Well, maybe -- maybe we'll look at
 23 it next time.

24 But -- so you didn't agree with
 25 GAO's recommendation that DEA ought to provide

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1 guidance regarding its regulations to
 2 registrants?

3 MS. SINGER: Objection. Asked and
 4 answered. Misstates the witness's testimony.

5 MR. BENNETT: And objection. Scope.
 6 Same instructions regarding the
 7 scope of your authorization on what you can and
 8 cannot testify about.

9 MR. UTTER: Go ahead.

10 THE WITNESS: I'm -- I'm sorry. You
 11 got to repeat the question.

12 BY MS. MAINIGI:

13 Q. Sure.

14 Did you -- it sounds like -- but
 15 tell me if I'm wrong.

16 It sound like you disagreed with the
 17 GEAQ [sic] recommendation that DEA needed to
 18 provide greater guidance to its registrants.

19 MS. SINGER: Objection. Foundation.

20 MR. BENNETT: Same instructions.

21 MR. UTTER: Go ahead.

22 THE WITNESS: Like I said, I don't
 23 have the report handy. But it seems to me we
 24 outlined all of the -- all of the communication
 25 we had with the industry. We outlined all of

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1 the avenues that industry could get answers to
 2 their questions. We outlined all of the
 3 inspections that were conducted for industry in
 4 their manufacturing and distribution sites.

5 We did all of that. And I -- if I
 6 remember correctly, GAO had no specific
 7 recommendations other than we should
 8 communicate or provide guidance on the regs and
 9 the statute.

10 BY MS. MAINIGI:

11 Q. To your knowledge, did that happen?

12 A. If I'm not mistaken, I -- I retired
 before a response was done on that.

13 Q. Now, do you remember testifying -- I
 think you were asked about it earlier.

14 Do you remember testifying before
 15 the Court in Cleveland in this particular
 16 matter in January of last year?

17 A. Yes.

18 Q. And I think you testified earlier
 19 that you were retained by Motley Rice to come
 20 testify there?

21 A. Yes.

22 Q. And I think you went over with the
 23 Court what was a suspicious orders and what was

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1 a suspicious pattern.

2 Do you remember that?

3 A. No. I don't remember that.

4 Q. You don't remember that?

5 Do you remember telling the Court
 6 that there had been ten years of guidance
 7 provided by DEA related to what a suspicious
 8 order was?

9 MR. BENNETT: Object to form.

10 MS. SINGER: Objection. Foundation.

11 THE WITNESS: I -- I don't have any
 12 document. I'd like to see what was said.

13 Do you have --

14 BY MS. MAINIGI:

15 Q. Do you --

16 A. -- have a document that shows what I
 17 exactly said?

18 Q. Well, to the extent -- let me ask
 19 you this: Are you aware of ten years of
 20 guidance being provide by the DEA to
 21 registrants regarding what a suspicious order
 22 is?

23 MS. SINGER: Objection. Asked and
 24 answered repeatedly.

25 MR. BENNETT: Objection. Vague.

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1 MR. UTTER: Same objection. Asked
2 and answered.

3 You can tell her again.

4 THE WITNESS: The -- the guidance
5 has always been the same over the last ten
6 years.

7 BY MS. MAINIGI:

8 Q. The regulation?

9 A. The regulation, yes.

10 Q. You think you told Court that, that
11 there had been ten years of --

12 A. I -- I don't --

13 Q. -- ten years of the regulation as
14 guidance?

15 MS. SINGER: Objection. Foundation.
16 The witness has asked to be shown the document.

17 THE WITNESS: I -- I don't recall
18 what I said. But again, I -- as I said
19 previously, if you have a transcript or -- or
20 presentation or something that I could look at,
21 that would -- that would help me -- help my
22 recollection.

23 BY MS. MAINIGI:

24 Q. Has there been ten years of guidance
25 provided by the DEA to registrants as to what

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1 constitutes a suspicious order?

2 MS. SINGER: Objection. Asked and
3 answered.

4 MR. BENNETT: Objection. Vague.

5 MR. UTTER: Same objection.

6 One more time.

7 THE WITNESS: Again, it's the
8 regulation, the meetings, the letters, the
9 Southwood decision. I mean -- yeah.

10 BY MS. MAINIGI:

11 Q. The letters meaning your '07 and '06
12 letters, right?

13 A. Yes.

14 Q. Any other letters?

15 MS. SINGER: Objection. Asked and
16 answered.

17 THE WITNESS: I'm not aware of any
18 other letters.

19 The Southwood decision. The
20 inspections where -- where we've had inspectors
21 on site every year going into different
22 facilities. And the conferences where we
23 talked about suspicious order monitoring.

24 I mean we -- I think that -- that
25 pretty much covers it.

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1 BY MS. MAINIGI:

2 Q. You had a slide deck at that
3 conference, right?

4 A. Yes.

5 Q. Do you still have that slide deck?

6 A. I'd have to look. It was a --

7 Q. We'd ask that you produce that.

8 Did you have some talking points for
9 that conference?

10 A. No.

11 Q. Did you have any handwritten notes
12 that you made in advance to the conference?

13 A. I don't know if I have any notes.
14 If I had any notes, they wouldn't be -- I
15 didn't keep them. But I don't recall if I used
16 notes. I think I went right off the slides.

17 MS. MAINIGI: Well, Counsel, we'd
18 ask that those slides and any related notes be
19 produced.

20 I'm going to go ahead --

21 MR. UTTER: I'll take it under
22 advisement.

23 MS. MAINIGI: -- and stop right now
24 because my colleague --

25 MR. UTTER: I'm not agreeing to

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1 that. I said I'll take it under advisement.

2 MS. MAINIGI: Understood.

3 My colleague just needs to
4 authenticate a document. My understanding is
5 he already discussed it with you.

6 MR. BENNETT: Yeah. That -- that's
7 fine.

8 MS. MAINIGI: Thank you very much,
9 Mr. Rannazzisi.

10 FURTHER EXAMINATION BY COUNSEL FOR WALMART

11 BY MR. STEPHENS:

12 Q. Mr. Rannazzisi --

13 A. Yes.

14 Q. -- just very quickly.

15 I showed you a document earlier that
16 was marked as Exhibit 10. Your counsel asked
17 me for the Bates numbered version of that,
18 which I have here now. It is Bates No. US --
19 US-DEA-00002413.

20 MR. STEPHENS: And I'd ask the court
21 reporter to mark it as the next in order,
22 please.

23 (Deposition Exhibit 14 was marked
24 for identification.)

25 BY MR. STEPHENS:

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1 Q. So, Mr. Rannazzisi, just very
2 quickly --
3 A. Yes.
4 Q. -- I'm just going to ask you if you
5 recognize this document.
6 A. It's one of the PowerPoints that we
7 did on the Internets.
8 Q. Okay. And this is a -- a document
9 that reflects a presentation that you may have
10 given?
11 A. I may have given it. Somebody else
12 in my staff may have given it.
13 Q. Okay. And the date at the bottom
14 left is March of 2007; is that right?
15 A. Yes.
16 Q. Okay. And it relates to Internet
17 pharmacies?
18 A. Yes.
19 MR. STEPHENS: All right. I have no
20 further questions. Thank you.
21 THE VIDEOGRAPHER: We are off the
22 record at 5:02 p.m.
23 And This concludes the test --
24 today's testimony given by Joseph Rannazzisi.
25 The total number of media units used

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1 was seven and will be retained by Veritext
2 Legal Solutions.
3 MR. BENNETT: And what was our total
4 time on the record?
5 THE VIDEOGRAPHER: Five hours -- six
6 hours and three minutes.
7 (Whereupon, the proceeding was
8 adjourned at 5:03 p.m.)
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1 CERTIFICATE OF NOTARY PUBLIC
2 I, Bonnie L. Russo, the officer before
3 whom the foregoing deposition was taken, do
4 hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly
6 sworn by me; that the testimony of said witness
7 was taken by me in shorthand and thereafter
8 reduced to computerized transcription under my
9 direction; that said deposition is a true
10 record of the testimony given by said witness;
11 that I am neither counsel for, related to, nor
12 employed by any of the parties to the action in
13 which this deposition was taken; and further,
14 that I am not a relative or employee of any
15 attorney or counsel employed by the parties
16 hereto, nor financially or otherwise interested
17 in the outcome of the action.

20 Notary Public in and for
21 the District of Columbia

23 My Commission expires: June 30, 2020

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2 1100 Superior Ave
3 Suite 1820
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6
7 April 28, 2019
8
9 To: GREGORY M. UTTER
10 Case Name: In Re: National Prescription Opiate Litigation v.
11
12 Veritext Reference Number: 3301876
13
14 Witness: Joseph Rannazzisi Deposition Date: 4/26/2019
15
16 Dear Sir/Madam:
17
18 Enclosed please find a deposition transcript. Please have the witness
19 review the transcript and note any changes or corrections on the
20 included errata sheet, indicating the page, line number, change, and
21 the reason for the change. Have the witness' signature notarized and
22 forward the completed page(s) back to us at the Production address
23 shown
24 above, or email to production-midwest@veritext.com.
25
26 If the errata is not returned within thirty days of your receipt of
27 this letter, the reading and signing will be deemed waived.
28
29 Sincerely,
30 Production Department
31
32 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 3301876
4 CASE NAME: In Re: National Prescription Opiate Litigation v.
5 DATE OF DEPOSITION: 4/26/2019
6 WITNESS' NAME: Joseph Rannazzisi
7 In accordance with the Rules of Civil
8 Procedure, I have read the entire transcript of
9 my testimony or it has been read to me.
10 I have made no changes to the testimony
11 as transcribed by the court reporter.

12 Date Joseph Rannazzisi
13 Sworn to and subscribed before me, a
14 Notary Public in and for the State and County,
15 the referenced witness did personally appear
16 and acknowledge that:
17 They have read the transcript;
18 They signed the foregoing Sworn
19 Statement; and
20 Their execution of this Statement is of
21 their free act and deed.
22 I have affixed my name and official seal
23 this _____ day of _____, 20_____.
24
25

Notary Public

Commission Expiration Date

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1 DEPOSITION REVIEW
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 3301876
4 CASE NAME: In Re: National Prescription Opiate Litigation v.
5 DATE OF DEPOSITION: 4/26/2019
6 WITNESS' NAME: Joseph Rannazzisi
7 In accordance with the Rules of Civil
8 Procedure, I have read the entire transcript of
9 my testimony or it has been read to me.
10 I have listed my changes on the attached
11 Errata Sheet, listing page and line numbers as
12 well as the reason(s) for the change(s).
13 I request that these changes be entered
14 as part of the record of my testimony.

15 I have executed the Errata Sheet, as well
16 as this Certificate, and request and authorize
17 that both be appended to the transcript of my
18 testimony and be incorporated therein.

19 Date Joseph Rannazzisi
20 Sworn to and subscribed before me, a
21 Notary Public in and for the State and County,
22 the referenced witness did personally appear
23 and acknowledge that:
24 They have read the transcript;
25 They have listed all of their corrections
in the appended Errata Sheet;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.
I have affixed my name and official seal
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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